

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA, .
vs. . DOCKET NO. SA:17-CR-391
RAUL RAMOS, ET AL, .
DEFENDANTS. .

TRANSCRIPT OF MOTION PROCEEDINGS
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
MARCH 19, 2018

APPEARANCES:
FOR THE PLAINTIFF: CHRISTINA LAURA PLAYTON, ESQUIRE
RUSSELL DeWITT LEACHMAN, ESQUIRE
ON BEHALF OF THE UNITED STATES
FOR THE DEFENDANTS: GEORGE B. DOMBART, ESQUIRE
ON BEHALF OF RAUL RAMOS
BRANDON TODD HUDSON, ESQUIRE
ON BEHALF OF ANGEL CANTU GARCIA
TERRENCE W. McDONALD, ESQUIRE
ON BEHALF OF ROBERT M. CANTU
TYLDEN SHAEFFER, ESQUIRE
ON BEHALF OF MARIANO VALDEZ, III
DANIEL JAMES VELA, ESQUIRE
ON BEHALF OF FERNANDO GONZALES
RONALD PERRY GUYER, ESQUIRE
ON BEHALF OF RICHARD GAMEZ
JOHN MICHAEL ECONOMIDY, ESQUIRE
ON BEHALF OF ARTHUR GALLEGOS
JOHN FAHLE, III, ESQUIRE
ON BEHALF OF DANIEL GARZA

1 JEFFREY MULLINER, ESQUIRE
2 ON BEHALF OF RICKY ESCOBEDO
3 ANTHONY B. CANTRELL, ESQUIRE
4 ON BEHALF OF JIMMY LEE ZUNIGA
5 SOSTENES MIRELESS, II, ESQUIRE
6 ON BEHALF OF MIGUEL HERNANDEZ
7 ALLEN F. CAZIER, ESQUIRE
8 ON BEHALF OF RAMIRO R. CARRIZALES
9 BERTRAM OLIVER WOOD, III, ESQUIRE
10 ON BEHALF OF ABEL JOSEPH GUERRERO
11 MR. GILMORE, ESQUIRE
12 ON BEHALF OF JOE PEREZ, III
13 ROBERT OTTO SWITZER, ESQUIRE
14 ON BEHALF OF JULIAN ROSAS GARZA
15 SCOTT W. McCRUM, ESQUIRE
16 ON BEHALF OF JUAN JOSE GONZALES
17 JAMES SCOTT SULLIVAN, ESQUIRE
18 ON BEHALF ROMAN GABRIEL GONZALES
19 EDWARD F. GARZA, ESQUIRE
20 ON BEHALF OF ANGEL ARREDONDO
21 ANTHONY MARTIN SMITH, ESQUIRE
22 ON BEHALF OF JOHNNY RAY MORALES
23 MICHAEL J. MORRIS, ESQUIRE
24 ON BEHALF OF ALFRED GARANSUAY
25 DAVID CAVAZOS, ESQUIRE
ON BEHALF OF FRAN MARIE GONZALES
JEB DANIEL LOCK, ESQUIRE
ON BEHALF OF ARTURO GARCIA BERNAL
RICHARD EMIL LANGLOIS, ESQUIRE
ON BEHALF OF ROBERTO HERNANDEZ
JON R. DISRUD, ESQUIRE
ON BEHALF OF ALBERT GUERRA MATA
MICHAEL W. McCRUM, ESQUIRE
ON BEHALF OF ROBERT RODRIGUEZ
ALBERT A. FLORES, ESQUIRE
ON BEHALF OF PEDRO TORREZ
EDWARD CAMARA, JR., ESQUIRE
ON BEHALF OF JESUS RODRIGUEZ
BERNARD CAMPION, ESQUIRE
ON BEHALF OF FREDERICK ROCHA
JAVIER N. MALDONADO, ESQUIRE
ON BEHALF OF OSCAR MARTINEZ
ROCHELLE M. ACEVEDO, ESQUIRE
ON BEHALF OF JOSE LUIS CORTEZ
THOMAS JOSEPH McHUGH, ESQUIRE
ON BEHALF OF MARC THOMAS REYES

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3 REPORTED BY: GIGI SIMCOX, RMR, CRR
4 OFFICIAL COURT REPORTER
5 UNITED STATES DISTRICT COURT
6 SAN ANTONIO, TEXAS
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1 (San Antonio, Texas; March 19, 2018, at 1:30 p.m., in open
2 court.)

3 THE COURT: 17CR391, U.S. versus Raul Ramos, and
4 others. Let's go through a roll call.

5 (Roll call was conducted.)

6 THE COURT: We've got, I believe, 27 pending motions.
7 We'll see where we're at on some of this. Some of these
8 hopefully will be easily disposed of or deferred.

9 For the government, is who?

10 MS. PLAYTON: Yes. Christina Playton on behalf of
11 the United States, with AUSA John Gibson, Russ Leachman, and
12 Karen Norris, who is appearing specifically only related to
13 the matters of the taint review.

14 And before we proceed, your Honor, the United States
15 has a motion to quash. Mr. Economidy has issued subpoenas to
16 AUSA Karen Norris and former federal employee David Shearer.
17 In conformance with the Touhy regulations we asked
18 Mr. Economidy to provide us with the details of what it was he
19 was seeking by way of a subpoena from those witnesses.

20 It was my understanding upon arriving here today --
21 that is done through John Pancizyn [phonetic] at our office --
22 that Mr. Economidy had not responded to that. In speaking
23 with Mr. Economidy, he provided me what purports to be his
24 response from Friday afternoon. And so I've just now had a
25 chance to see that response.

1 It does not change our position on the motion to
2 quash. Mr. Economidy is seeking to obtain testimony from
3 Miss Norris and Mr. Shearer. Specifically he's asking -- they
4 are both present in court, let me tell the Court that. They
5 are both here in the court. Mr. Shearer is in the back. But
6 he is seeking to ask them questions related to what they wrote
7 in the motion.

8 Mr. Shearer, he wants to know what is the form of the
9 basis for what he wrote in the motion. They are both here and
10 can address the Court as officers of the court. Miss Norris
11 is going to address the Court outside my hearing with regard
12 to the procedures that were used in the taint review and any
13 questions the Court has.

14 So, first and foremost, it's unnecessary, but the
15 defendant has not complied with Touhy regulations in the sense
16 that he has not in advance given us notice of exactly what it
17 was he was going to ask. But in addition, some of the things
18 that he wants to ask them are things like, Have you ever been
19 to Geo? Do you know how hard it is to communicate with
20 your -- with the -- your clients in Geo? All of these would
21 be unnecessary questions, things of which would not help the
22 Court resolve the issue.

23 I have a written motion to quash, if the Court wants
24 that at this time. I thought we could address it orally, as I
25 don't believe their testimony is necessary, first and

1 foremost.

2 THE COURT: Okay. We'll take up that when I get to
3 it.

4 So going down my list, first we have a motion by
5 Roberto Hernandez to seek suppression of evidence from 1518
6 Amanda, Apartment 134. Those are two motions, 775 and 776.

7 Mr. Langlois, you filed that motion. I guess my
8 question is: This motion was just filed on March 16th, can it
9 be heard on the same day as we have the other motion to
10 suppress filed by defendant Robert Rodriguez on April 3rd?

11 MR. LANGLOIS: Probably it can be, your Honor. I
12 think it's pretty much -- I don't know that it will require
13 any testimony, but I think it could be pretty much done on
14 briefs, or something like that.

15 THE COURT: And then my second question, Mr. Langlois
16 is: There are two motions, 775 and 776; are these duplicates
17 or can I moot 775?

18 MR. LANGLOIS: There was one that had the -- had 361
19 instead of 391, your Honor.

20 THE COURT: Okay. So the first motion, 775, is
21 dismissed as moot. 776 is pending, and we'll hear that on
22 April 3rd.

23 The next set of motions are docket numbers 730, 747,
24 751, 763, and 767. They are all requests for 404(b) evidence
25 filed by attorneys Campion, Jeb Lock, and Scott McCrum. They

1 are requesting that the government produce before trial any
2 evidence of other wrongs, crimes, or acts it intends to use
3 against them.

4 What's the government's response?

5 MS. PLAYTON: We will provide notice of all 404(b).

6 THE COURT: And when will you have notice provided
7 by?

8 MS. PLAYTON: What is the Court's normal order before
9 trial? Is it 20 days?

10 THE COURT: Well, we need to work on a scheduling
11 order here at the end of all of this. But I mean, rather than
12 wait, I mean, why isn't something like that -- why can't that
13 be done within two weeks?

14 MS. PLAYTON: Well, honestly, because we're going to
15 be responding in writing to the motions to suppress that were
16 just filed, and in order to be thorough I would prefer to file
17 it at a later time. I am already in receipt of many of their
18 criminal histories and I'll be reviewing them, but they are
19 lengthy, and so that I can provide adequate notice I think
20 perhaps 45 days from today or prior to trial.

21 THE COURT: Okay. Someone keep track on me too, so I
22 don't forget things.

23 When we talk at the end about a scheduling order,
24 remind me to get a deadline on the government to give the
25 404(b) evidence.

1 So with regard to docket numbers 730, 747, 751, 763,
2 and 767, those motions are all granted.

3 Then we have another set of motions, 728 and 762
4 filed by attorney Campion and Jeb Lock requesting limine of
5 any other extraneous crimes or misconduct by the accused or
6 other defense witnesses.

7 MS. PLAYTON: Your Honor, I'd ask that you defer this
8 until we have had an opportunity to litigate -- to first
9 provide notice and litigate any other issues that we need to.

10 THE COURT: So Mr. Campion and Mr. Lock, let me hear
11 from you. If I'm going to give a deadline on the 404(b)
12 evidence, shouldn't we put that first and then we defer the
13 motion in limine until after I do that?

14 MR. CAMPION: I would agree with that, your Honor.

15 MR. LOCK: That would be fine, Judge.

16 THE COURT: Okay. So 728 and 762 remain pending and
17 we need to have a motion in limine conference that we need to
18 insert into the scheduling order.

19 Next motion, motion for James hearing, docket number
20 731, Mr. Campion's motion. The movant requests that the
21 government satisfy to the Court the existence of a conspiracy,
22 and that the statements of coconspirators were made during the
23 course and in furtherance of the conspiracy before admitting
24 such statements.

25 What's the government's response?

1 MS. PLAYTON: It's twofold. First, this is a Hobbs
2 Act conspiracy and so there are many defendants in this case.
3 But more importantly, this ruling is better made at or near
4 the time of trial, and at or near the time you know which
5 defendants are pending for trial, which statements would be
6 relevant, and as part of the trial. And so if the Court -- I
7 would ask the Court either to dismiss at this time as
8 premature, or to defer it until a later time.

9 THE COURT: And so with regard to Frederick Rocha,
10 the only person bringing this motion -- I guess there is
11 others who are joining, and I'm not sure at which point -- if
12 they are joining all motions or not, but let's just focus on
13 Mr. Rocha. Does the government have any proffer at this time
14 as to how he's involved in the conspiracy?

15 MS. PLAYTON: You mean, in terms of his involvement?

16 THE COURT: Right.

17 MS. PLAYTON: Yes. Let me speak with the FBI agent.

18 (Off the record discussion.)

19 MR. LOCK: Your Honor, if I may.

20 THE COURT: Yes.

21 MR. LOCK: Going back to the 404 motion that you
22 granted, I think that's part of the reasons why everybody has
23 filed a motion to join, so we don't have to -- so you don't
24 have to receive those motions. I think if you could make a
25 blanket order to just provide the 404 for all the defendants,

1 and then that way we don't all have to individually file for
2 that motion.

3 THE COURT: Yeah, no. That's my intent. So that's a
4 global ruling as to all defendants. Thank you.

5 MS. PLAYTON: Your Honor, no, we are not prepared to
6 address that at this time. I was under the impression that we
7 were going to deal strictly with the motions filed by --
8 relating to the search of the cell, and so I did not prepare
9 the agents for that.

10 THE COURT: So, Mr. Campion, I mean, in cases as
11 complex as this, the Court doesn't have to hold a pretrial
12 hearing and can conditionally admit the challenged statements
13 until a determination of Rule 801(d)(2), predicate facts, can
14 be made. I mean, why should I have two hearings at this
15 point?

16 MR. CAMPION: I don't know that it would be legally
17 required, your Honor. In terms of preparation, it makes it
18 difficult in a situation that's as complex as this one. Of
19 course, as you are aware, the indictment alleges two separate
20 conspiracies, one a Hobbs Act conspiracy, and one a drug
21 conspiracy. My client, Mr. Rocha, is only named in the Hobbs
22 Act conspiracy. And, of course, this gets to the severance
23 issue that we have raised.

24 But I think when we start intermingling the
25 statements of coconspirators on different conspiracies, it is

1 a situation that I fear at the last minute may be difficult to
2 address.

3 MS. PLAYTON: Your Honor could carry that issue with
4 the actual trial itself. That is actually a very common
5 practice with that type of issue.

6 THE COURT: Let me defer ruling on that and I'll
7 continue to take that under advisement as I take up the
8 motions to sever and the other issues in this case.

9 Next motion is a motion for bond by Mr. Fonseca,
10 docket number 701.

11 MS. PLAYTON: That was addressed this morning.

12 THE COURT: That's my question. Mr. Gutierrez?
13 Is he here? No? So, yeah, Mr. Gutierrez is not
14 here.

15 That's still showing as pending at the magistrates.

16 MS. PLAYTON: It was heard. And actually I got a
17 text order that the court denied it and that was ruled on this
18 morning.

19 THE COURT: Yeah. It's still showing up as a pending
20 motion --

21 If you can check on that, Becky.

22 Next issue, Rocha's motion for bond and inpatient
23 treatment, docket number 720.

24 Mr. Campion, is this still with the magistrate?

25 MR. CAMPION: It's still with Judge Bemporad. He's

1 already had two evidentiary hearings on this, and it's an
2 issue that I'm hoping we can get worked out. I've had a
3 chance to touch base very briefly with the prosecutors, the
4 new prosecutors on this case. I think, given a minimum amount
5 of time, hopefully we can get it resolved. But, if not, we
6 would perhaps request that it be taken up again, but I think
7 it's pending in Judge Bemporad's court.

8 THE COURT: But whose ball is it? Is it in the
9 magistrate's to-do list, or is there something else that needs
10 to be done?

11 MR. CAMPION: No, it's on the docket in the
12 magistrate's court. It's pending there. And, as I said --

13 THE COURT: I guess it would be more polite, has he
14 just not ruled on it, or why is it taking so long?

15 MR. CAMPION: No, what's happening, your Honor, is at
16 the initial detention hearing Mr. Rocha was placed on bond
17 conditioned upon inpatient treatment and there was some
18 difficulty finding a placement. He couldn't go to
19 in-placement treatment until he had a place to discharge to.
20 It took a long to him to get a suitable residence for him to
21 discharge to.

22 Subsequent to that, he was put in inpatient treatment
23 and there was an issue arose there and he was sent back to San
24 Antonio. We had another hearing in front of Judge Bemporad.
25 He did not revoke his bond. He left him on bond, conditioned

1 upon placement in another suitable in-placement treatment
2 program. We've been unable to locate one because he's
3 indigent. If he had funds, he would already be in placement.
4 He would already be in treatment. But because of his
5 indigency, he's dependent upon programs that are basically
6 funded by the government, which is very limited, and there has
7 been none available to this point.

8 So what we're asking the judge to consider -- it's in
9 front of Judge Bemporad, but we would be happy to have this
10 Court rule on it -- what we're asking the Court to consider
11 is -- he's been over a year of testing clean and satisfactory
12 participation in the treatment programs he has been in.

13 We're asking the Court to consider, in lieu of
14 inpatient treatment, which we just don't have available,
15 unfortunately, to consider an electronic restriction like
16 electronic monitor with intensive outpatient.

17 THE COURT: Okay. Yeah, at this point, I'm not going
18 to usurp Judge Bemporad's role. I guess I was more curious
19 about what was happening. So it is being tended to?

20 MR. CAMPION: I talked to them last week. Judge
21 Bemporad was on vacation, I think, but he's supposed to be
22 back today.

23 THE COURT: I'll leave it with him. Thank you.

24 So then that takes us to motions to sever, docket
25 number 729, 739, 744, and 754 filed by attorneys Campion, Jeb

1 Lock, Albert Flores, and Kevin Collins. And so I was going to
2 ask if there is any other argument or evidence in support of
3 the motions, and so Mr. Campion raised the distinction between
4 some individuals charged solely as a Hobbs conspiracy and
5 others charged solely as a drug conspiracy. That's an
6 interesting way of looking at this. I had not been looking at
7 the defendants' cases that way.

8 Can a clear distinction be made in this case that
9 way, or not?

10 MS. PLAYTON: No, your Honor.

11 The Hobbs conspiracy relates to the collection of the
12 dime which involves the drug trade, and so all of the acts
13 that would form the basis of the allegations in Counts 1 and
14 Counts 2 would be the same and similar. They are all related
15 and it's part -- each act is in furtherance of either the
16 Hobbs conspiracy and the drug conspiracy. So based on the
17 counts, there is no basis for severance.

18 Additionally, I would point out to the Court that
19 these defendants have all sought to join each other's motions,
20 which is indicative of how they are related and similarly
21 situated. All of the facts and circumstances regarding how
22 they acted and with regards to any of the counts and with
23 regards to each other would be relevant and would come in for
24 each defendant.

25 THE COURT: So without doing like a tally, are there

1 any defendants just charged on the drug conspiracy that are
2 not charged in the Hobbs conspiracy?

3 MS. PLAYTON: There are.

4 THE COURT: How many?

5 MS. PLAYTON: I'm going to ask -- actually call upon
6 Mr. Shearer.

7 David, would you come up?

8 THE COURT: Only two?

9 MS. PLAYTON: Yes.

10 THE COURT: Out of the 33, 29, whatever it is?

11 MS. PLAYTON: Yes.

12 THE COURT: Okay. So as, Mr. Shearer, you walk up,
13 I'm going to say there is no need.

14 I'm going to take the motions to sever under
15 advisement, unless -- let me get Mr. Campion, Mr. Lock,
16 Mr. Flores, and Mr. Collins, anybody want to say anything new
17 that you have not said already in your motion?

18 MR. FLORES: Can I approach, your Honor, please?

19 THE COURT: Yes.

20 (At the bench.)

21 MR. FLORES: Aside from regular issues that crimes of
22 all, you know, shouldn't be placed on our guy. In particular,
23 I think it's probably my guy, maybe a couple of other guys,
24 that either claim to have disengaged, or are no longer a part
25 of the mafia issue. The reason I'm up here is because of a

1 problem.

2 THE COURT: Apparently disengagement is frowned on.

3 COURT REPORTER: I'm having difficulty hearing you.

4 MS. PLAYTON: She can't hear you.

5 MR. FLORES: Yes. So those are arguments I would
6 like to bring up on my particular guy, my particular motion,
7 which is why I filed it. If he's no longer -- and if we have
8 some sort of cutting-off point that we can prove.

9 THE COURT: But I guess what I'm having trouble with
10 that whole disengagement theory is, isn't he charged for
11 activities that he was participating in, allegedly, while he
12 was still a member?

13 MR. FLORES: Well, I'm arguing no. I'm arguing that
14 the break happened before that point. I just don't know if I
15 can prove that. That's the only separate issue.

16 MS. PLAYTON: And, your Honor, I would like to file a
17 written response. I mean, most of these motions were filed
18 just last week, and I actually was not aware that we were
19 going to hear them substantively today.

20 THE COURT: Your client is Pedro Torrez?

21 MR. FLORES: Yes.

22 THE COURT: The only reason I'm having the hearing
23 all at the same time is with these number of defendants I
24 can't have multiple hearings here, it's just too problematic,
25 so...

1 MS. PLAYTON: I would ask the Court to perhaps
2 reconsider some way because it could -- having them all at
3 once and having them altogether all the time could foster the
4 sense of sort of a gang mentality, which would make it
5 challenging to move the case.

6 THE COURT: I understand that too, but then, I mean,
7 they all have a right to be present during the trial
8 proceedings, so, I mean, how do I get around that?

9 MS. PLAYTON: Trial is a separate issue.

10 THE COURT: I'm talking about pretrial. They have a
11 right to be present for all parts of their case.

12 MS. PLAYTON: But there are some motions that would
13 be unique to each defendant --

14 MR. FLORES: Like this.

15 MS. PLAYTON: -- actually.

16 THE COURT: So let's do this. With regard to the
17 severance, file your responses to everybody who has filed.
18 And everybody who is making unique arguments, file a tailored
19 response individually, for example, like Mr. Flores's client.
20 And so, you know, get that in as soon as you can.

21 MR. LEACHMAN: Another thing that I think you're
22 going to find, I mean, a lot of these people won't be here,
23 come trial day. And the ones that are, there may be some
24 divisions that make some sense and you're not going to be able
25 to determine those as you look at the sea of people until we

1 start moving some of the case.

2 THE COURT: Until I start making some kind of
3 rulings, we are not going to get some movement here.

4 MR. LEACHMAN: We are going to start working in
5 earnest on that, Judge. Well, one of the things, Judge -- the
6 other thing, and I guess we'll let the Court know, is we are
7 likely going to supersede the case, and we are going to go to
8 a bunch of these folks before we do that and see where we're
9 at. So we anticipate that may --

10 THE COURT: Well, for now, let's just get a response
11 to all the various severance motions. If it can be a global
12 response, great. If it needs to be tailored, let's tailor it.

13 MS. PLAYTON: Okay.

14 (Open court.)

15 THE COURT: Mr. Disrud, are you present now?

16 MR. DISRUD: Yes, your Honor. I apologize for being
17 late.

18 THE COURT: Thank you.

19 With regard to the motions to sever, Mr. Champion
20 Mr. Lock, or Mr. Collins, any our other new arguments you want
21 to make that are not already in your current motions?

22 MR. CAMPION: If I could approach, your Honor?

23 THE COURT: Come on up.

24 (At the bench.)

25 MR. CAMPION: There is another issue that's not in

1 motion, your Honor. It is the testimony at the detention
2 hearing, the two of them we've had established that Mr. Rocha
3 had actually severed ties with the Mexican Mafia, at least a
4 year prior to his indictment.

5 And he is classified as an ex-member. He's not even
6 associated with the Mexican Mafia right now. Of course, being
7 an ex-member has been an issue with getting him into a
8 treatment program, as far as places that will take him when
9 they are concerned about potential threats and whatnot, so...
10 But I didn't put that in the motion, but there is a
11 distinguishing factor between him and the others, and that is
12 that he's not one of them anymore.

13 THE COURT: So we just had that issue here, and so
14 with regard to any of your response, let's try to make it
15 clear whether or not this defendant is charged with acts that
16 he engaged in while he was still a member.

17 MS. PLAYTON: Well, I mean, his claim here at the
18 bench that he wasn't a member may be contravened by the very
19 facts of his participation in the conspiracy, so...

20 THE COURT: Right.

21 MR. CAMPION: His actions in the conspiracy were
22 completely before this. I mean, they go way back.

23 THE COURT: So at some point I need to have an
24 understanding of just who was a member and who wasn't a
25 member, because this goes back to that Hobbs claim, and so who

1 is being charged with activities under Hobbs, and so...

2 MS. PLAYTON: And who is taking acts in furtherance
3 of the conspiracy.

4 THE COURT: Yeah. And so now it's kind of, I just
5 need to have an understanding about how an ex-member could be
6 taking acts in furtherance of the conspiracy. Maybe he was.
7 Maybe he wasn't. I don't know, but I'm just asking for
8 explanations.

9 MR. LEACHMAN: Most likely the conspiracy goes back
10 to when he was a member.

11 THE COURT: And so all I'm asking -- at this point,
12 guys, I know nothing about the facts of the case, so you'll
13 have to educate me about those. Thanks.

14 (Open court.)

15 THE COURT: With regard to the motions to sever, I'll
16 wait for responses from the government and those are taken
17 under advisement.

18 So the next set of motions are motions for statements
19 or confessions of any defendant, docket number 729 and 739
20 filed by attorneys Campion and Jeb Lock. The movants rely
21 upon Bruton and they move the Court to order the government to
22 produce for in camera inspection any statements or confessions
23 made by any defendant which the government intends to use at
24 trial.

25 What's the government's response?

1 MS. PLAYTON: Well, we have provided full discovery
2 in this case. Everything, all of the wires, all of the
3 interview statements have already been provided. So I don't
4 know if there is something specific that they are seeking,
5 or -- you know, at this point, I'm not sure, they are asking
6 for codefendants, we don't know exactly who is going to be set
7 for trial and under what circumstances which statements would
8 be relevant, so I would ask the Court either to deny it at
9 this time as premature, or to defer it.

10 THE COURT: Mr. Campion or Mr. Lock, do you believe
11 that there is any current statements or confessions that you
12 have not received?

13 MR. CAMPION: None that I -- I'm not aware of any
14 that I have not received. Although, I think, as Miss Playton
15 has referenced, there are extensive wiretaps in this case,
16 and, of course, that could give rise to, I mean, just an
17 untold amount of statements of codefendants.

18 THE COURT: So, I mean, speaking globally to all the
19 defense counsel, have y'all not received the wiretaps?

20 MR. CAMPION: I believe we have, your Honor. And
21 that goes to the issue we've raised, as far as the inability
22 to cross-examine those witnesses, should they choose not to
23 testify.

24 MR. DOMBART: Judge.

25 THE COURT: Yes.

1 MR. DOMBART: I would say there is a correction also,
2 because there was a recent email that said that there were
3 some additional phones that are at the FBI office and we need
4 to contact the agent at the FBI to review those phones.

5 THE COURT: Okay. One second here. And so when
6 anybody starts speaking, identify yourself for the court
7 reporter.

8 I'll get to additional discovery that may or may not
9 be missing here in a minute. I want to go back just to the
10 confessions and the statements.

11 So, Mr. Lock, are you missing anything?

12 MR. LOCK: Not that I know of, Judge.

13 THE COURT: Mr. McCrum?

14 MR. MCCRUM: Judge, you asked all counsel as to
15 whether or not, we are talking about just wiretap, as far as
16 Bruton, I think we should see any confession made by any
17 codefendant that may be the subject of a Bruton motion, and so
18 I've not received confessions of codefendants.

19 THE COURT: Does there exist any by the government --
20 or from the government?

21 MS. PLAYTON: I believe -- before I respond.

22 (Off the record discussion.)

23 THE COURT: And so I don't want you to identify any
24 confessions by a codefendant, I just want to know whether or
25 not there exist any.

1 (Off the record discussion.)

2 MS. PLAYTON: So potentially two, your Honor.

3 THE COURT: Okay. So if there exists two, two need
4 to be produced.

5 Mr. Lock.

6 MR. LOCK: Your Honor, I would like to make a
7 correction that I would like discovery -- production of
8 discovery. There was a raid on my client's cell.

9 THE COURT: We're going to get to that point in a
10 minute.

11 MR. LOCK: Okay. I was going to ask for those notes,
12 if they exist.

13 THE COURT: That's another item.

14 So with regard to the motions for statements or
15 confessions of any defendant, docket number 729 and 739, that
16 is granted.

17 Motions to suppress by Ricky Escobedo, docket number
18 777, Mr. Mulliner's motion. And this is a motion to suppress
19 due to illegal wiretapping? Is this related to the cell
20 search, or are you talking about something else now?

21 MR. MULLINER: No. This motion is referring to the
22 tap, to the fact that he was not the subject of a wiretap.

23 THE COURT: So these wiretaps were pre-existing the
24 cell seizure?

25 MR. MULLINER: Yes, sir.

1 THE COURT: We're going to hear that at a separate
2 time. We'll hear that on April 3rd.

3 MR. MULLINER: Yes, sir.

4 THE COURT: Then now to the cell search. Motion to
5 appoint special master, motion for rehearing regarding
6 protective order, omnibus motion on prosecution's
7 exploitation, motion for judicial notice, and motion to
8 suppress, docket number 711, 714, 732, and 733, filed
9 primarily by Michael Morris, Economidy, and Cazier.

10 Let's go through the facts first of what happened
11 here, so I can have an understanding about happened. So what
12 caused the government to believe that the protective order was
13 violated?

14 MS. PLAYTON: We were receiving information from
15 various attorneys that individuals --

16 THE COURT: Attorneys in this case?

17 MS. PLAYTON: Yes, defense attorneys in this case.
18 That defendants in this case were in possession of documents
19 that were provided in discovery. We heard that on more than
20 one occasion from more than one person.

21 Additionally, a separate correspondence from jail,
22 from an individual who is a Texas Mexican Mafia member who is
23 in the Bureau of Prisons, not in Geo, there was correspondence
24 intercepted that indicated that they were in possession of
25 documents related to, you know, source information.

1 THE COURT: Let me stop you here. So this other
2 alleged Mexican Mafia member in a BOP prison --

3 MS. PLAYTON: Yes.

4 THE COURT: -- he was in receipt of documents subject
5 to the protective order?

6 MS. PLAYTON: He was receiving information from
7 individuals in Geo in this case from the documents that were
8 the subject of the protective order.

9 THE COURT: So that other person didn't actually have
10 the documents, but he had the information that was contained
11 in the documents?

12 MS. PLAYTON: Yes, correct. And was communicating
13 about that.

14 THE COURT: And so whose cells were searched? Were
15 all the defendants in this case cells searched?

16 MS. PLAYTON: Yes. That information was provided to
17 the facilities and they, the facilities themselves, conducted
18 a search.

19 THE COURT: And so let's talk about how the search
20 was conducted. Was it just of the cell or was it the physical
21 bodies of the defendants themselves?

22 MS. PLAYTON: I believe it was just the cell.

23 THE COURT: And so --

24 MS. PLAYTON: That is our understanding, yes, your
25 Honor.

1 THE COURT: And so who conducted the cell search?
2 Was FBI agents conducting the cell search?

3 MS. PLAYTON: No, it was the facility. So it was
4 Guadalupe County and Geo.

5 Those two facilities?

6 UNIDENTIFIED FEMALE SPEAKER: And Wilson.

7 MS. PLAYTON: And Wilson. And the actual jail
8 administrators, the people who do that, conducted the
9 searches.

10 THE COURT: Okay. And documents were seized, I'm
11 told, from Raul Ramos' cell, Robert Cantu's cell, Richard
12 Gamez's cell, Arthur Gallegos' cell, Richard Escobedo, and
13 Alfred Garansuay, and Albert Guerra Mata's cell.

14 MS. PLAYTON: That's correct.

15 THE COURT: Were documents seized from any other
16 cells?

17 MS. PLAYTON: Yes. This is how -- my understanding,
18 of how it was conducted. The jail administrators were advised
19 of the information that we had about documents, government
20 documents and discovery being inside the facility. The jail
21 facility then did their own search.

22 DEFENSE COUNSEL: Excuse me, Judge? Could she speak
23 at the mike, please?

24 MS. PLAYTON: Once they did the search, they took out
25 documents -- and as your Honor knows, they were clearly marked

1 government documents. They took out documents and placed them
2 in bags identifying who those documents belonged to. And they
3 were then placed in a separate conference room so that members
4 of what is referred to as the taint team, agents who are not
5 agents in the prosecution team, then went into those rooms,
6 looked through those bags, and any item that appeared to be
7 either a 302, a line sheet, or some document that referred to
8 the case and source reporting, was then segregated and
9 provided to the taint attorney Karen Norris.

10 And then items that were clearly not related or
11 relevant, like drawings, or personal letters, or something
12 that was clearly unrelated, was then returned to the jail
13 staff.

14 THE COURT: So documents that had nothing to do with
15 this case that were completely personal in nature were
16 retained -- were returned to the individual defendant?

17 MS. PLAYTON: They were returned to the jail staff.
18 The agents, who are members --

19 THE COURT: Well, let's talk about what happened to
20 the stuff though. So did the jail staff give it back to the
21 defendant?

22 MS. PLAYTON: I don't know what their procedure was.

23 THE COURT: So we don't know that yet? Okay.

24 MS. PLAYTON: No, your Honor.

25 THE COURT: Was any other contraband seized from the

1 cells other than documents?

2 MS. PLAYTON: Yes. There were four cell phones --

3 Is there a shank?

4 -- and several shanks.

5 THE COURT: Okay. And what happened to the cell
6 phones?

7 MS. PLAYTON: Those were turned over to the FBI, a
8 search warrant was obtained and signed, and those phones are
9 being searched.

10 THE COURT: By the taint attorney, or by who?

11 MS. PLAYTON: By the FBI, the trial team.

12 THE COURT: So if --

13 MS. PLAYTON: So those would be contraband. Those
14 cell phones, they are not -- they were hidden. So there are
15 actual telephones in these cell blocks, and apparently the two
16 cell phones were hidden behind one phone, and then another two
17 were hidden behind the other public phone that they are
18 allowed to use.

19 THE COURT: Okay. So the government is representing
20 that the seven individuals had documents seized from them. Is
21 anybody else among the defense counsel claiming that documents
22 were seized and still improperly held?

23 MR. SWITZER: May it please the Court. My client
24 informed me that notes that he had prepared for me, not
25 protective documents, were seized, and I presume are being

1 examined by the taint team.

2 THE COURT: I'm sorry who is you're client?

3 MR. SWITZER: Julian Rosas Garza, your Honor.

4 THE COURT: Anybody else claiming documents?

5 MR. CAZIER: Your Honor, Allen Cazier for Ramiro
6 Carrizales. We will proffer and offer evidence that personal
7 notes of Mr. Carrizales were seized and have not been
8 returned.

9 MR. McHUGH: Your Honor, defendant number 37, Marc
10 Reyes.

11 MR. MULLINER: Your Honor, Jeff Mulliner for attorney
12 number 10, [sic], Ricky or Ricardo Escobedo. We are
13 suggesting that a single sheet of notebook paper and nothing
14 that was subject to the protective order was seized
15 unlawfully.

16 THE COURT: We got you covered.

17 MR. MORRIS: I'm assuming you have me covered as
18 well. Mike Morris, your Honor.

19 THE COURT: I've got Mr. Morris, Economidy, and
20 Cazier I've got covered. I'm asking about anybody else.

21 MR. CANTRELL: Your Honor, Anthony Cantrell, for
22 number 11, Jimmy Lee Zuniga. After conferring with my client
23 yesterday, he did express to me that information that he had,
24 questions for me, clearly attorney/client privilege
25 information, was seized and had not been returned to him at

1 this time.

2 MR. LOCK: And Judge, Jeb Lock for Arturo Garcia
3 Bernal. Same situation. He told me this afternoon that there
4 were notes that he made in connection with this case with
5 questions he had for me that were seized and have not been
6 produced or given back to him.

7 MR. GARZA: Your Honor, Ed Garza on behalf of
8 defendant number 19, also the same situation.

9 MS. PLAYTON: What's defendant 19's name?

10 THE COURT: Hold on.

11 MS. ACEVEDO: As to number 36, Jose Luis Cortez, same
12 exact situation, Judge. In conferring with my client he said
13 that items that were specifically meant for me were seized and
14 not returned.

15 THE COURT: I'm sorry, what's your client's number
16 again?

17 MS. ACEVEDO: Thirty-six.

18 THE COURT: Thirty-six. Thank you.

19 MR. HUDSON: Brandon Hudson for Angel Cantu Garcia,
20 number 3. He had some personal notes. I'm not sure what the
21 content of them was, other than there were some litigation
22 issues that he and I were going to discuss. That's all I
23 know.

24 MR. GUYER: Robert Guyer for Richard Gamez, your
25 Honor. If you called our name, I didn't know. But, yes, we

1 had personal items taken, and they were notes from
2 attorney/client conferences.

3 THE COURT: And that's number 7.

4 MR. DISRUD: Jon Disrud. I represent Albert Guerra
5 Mata, and personal notes were seized from my client as well.

6 MR. VELA: Good afternoon, your Honor. Daniel Vela,
7 on behalf of number 6, Fernando Gonzales. There are personal
8 items, personal notes, that he had also in his possession that
9 he wanted to talk to me about. I don't know the content, but
10 they are definitely between the attorney and client, your
11 Honor, and should be returned to him.

12 MR. McDONALD: Terry McDonald for Robert Cantu,
13 number 4. He was mentioned by you when you called out the
14 names, and we would like the matters that were seized to be
15 examined and those to be returned. They have not been
16 returned yet.

17 MR. ECONOMIDY: John Economidy, your Honor, on behalf
18 of number 8. I have some problems with representations made
19 to the Court. The representation was that basically Geo did
20 the searches.

21 THE COURT: Yeah. So I'll give you a chance to
22 respond.

23 MR. ECONOMIDY: Okay.

24 THE COURT: Let me get at least one side of the
25 version and then I'll ask somebody to respond.

1 So we have documents seized. The government is
2 contending that some that were clearly not relevant to this
3 case and personal in nature were given back to the facilities.
4 We don't know what the facilities have done to those
5 documents; correct?

6 MS. PLAYTON: That's correct, your Honor.

7 THE COURT: And then with regard to the documents
8 that were seized and they were given to Miss Norris,
9 Miss Norris is reviewing them to see what they are, she makes
10 a determination that some documents were documents that could
11 potentially have been subject of the protective order, and so
12 where do we stand now? And I'm not sure if I should, you
13 know, get Miss Norris to come up here now, but what happened
14 physically with these documents at this point?

15 MS. PLAYTON: So once the taint review agents had the
16 documents sorted out, they provided them all to Karen Norris.
17 Items that were not a part of this case and were not relevant
18 were returned to and left with the jail staff. Miss Norris
19 then, and she will need to tell you more about -- she's
20 already reviewed everything. The majority -- I mean, there is
21 like 900 pages, I believe over 600 are government documents,
22 302s, line sheets, just straight out of our discovery, source
23 reporting.

24 Then there are other documents that she has
25 segregated out where she, if she thought it was clearly

1 privileged, and clearly not a government document and not
2 relevant to the Court's protective order and not placing
3 anyone in jeopardy, she reached out to the lawyers -- and I'll
4 have her talk to the Court, and she may need to do this at the
5 bench outside my hearing so that I don't hear the contents of
6 any of those documents that she reviewed, she reached out to
7 the lawyers and that is how they -- they then filed this
8 motion because she went through that procedure of reaching out
9 to them.

10 Documents that were potentially privileged -- so
11 there is three categories, not privileged, government
12 documents, line sheets, source reporting, things that we gave
13 them.

14 The second items would be things that appear to be
15 privileged and not related to the protective order, so any
16 attorney/client communication or things like that, she reached
17 out to the lawyers and returned some items to some lawyers.

18 And then the third category is the category in the
19 middle where your Honor may be called upon to review and make
20 a decision, and those are documents that may be privileged but
21 may also be in violation of the protective order.

22 THE COURT: So, Miss Norris, without making any
23 references to the prosecution team, I don't want to know about
24 content, I want to know about process. So you received
25 950-something pages?

1 MS. NORRIS: It was something like that. I don't
2 have that number right in front of me, but, yes, I received a
3 large number of documents but they were segregated by the cell
4 from which they were seized, the defendant in that cell. So
5 they were in batches.

6 THE COURT: And so how many of the 950 or so
7 documents have you and the defense lawyers ultimately reached
8 agreement upon and you gave them back to them saying this was
9 privileged?

10 MS. NORRIS: So what I did, your Honor, is after I
11 finished my review, and I believe it was February 13th, I sent
12 each defense counsel an email saying who I was, what I had
13 done in the case, and then I provided them with an index of
14 the documents that have been seized from their client's cell,
15 you know, with a brief description of what the document was
16 and then what my initial categorization, privilege, not
17 privilege, et cetera.

18 In that email I told them that if they wanted to
19 review any of the documents, they could make an appointment
20 and come by. I told them that any documents that I had found
21 to be privileged, upon request I would return to them.

22 And if they wished to assert privileges to any
23 documents listed, to let me know by February 27th, and so I
24 received correspondence from some of the attorneys asserting
25 privileges, and when I received that correspondence I went

1 back through the index and marked it so they were clearly
2 identified that a privilege had been asserted, and I returned
3 documents to some of the counsel who asked for it.

4 Some of the counsel I had no communication from at
5 all, so... And we have done nothing with the documents
6 pending this hearing, so...

7 THE COURT: So, for an example here, documents that
8 were seized from Mr. Garansuay, I was tendered a package that
9 these were the documents from Mr. Garansuay.

10 MS. NORRIS: Correct.

11 THE COURT: With regard to the other six that
12 documents were seized from, I don't have any such package.

13 MS. NORRIS: I tendered those documents to the Court
14 upon the Court's request. I also informed Mr. Morris that I
15 had done that, so he knew exactly what my correspondence was
16 with the Court and what I had tendered to the Court.

17 There were some instances where, you know, the
18 documents were not privileged. It might have been a copy of a
19 docket sheet, or something like that. And in those cases, it
20 didn't particularly surprise me that defense counsel didn't
21 reach out to me. It wasn't anything of any significance.

22 THE COURT: Well, where I'm heading with this is out
23 of the 950-something pages that you saw, it appears that 600
24 something of them were discovery materials that are clearly
25 not privileged.

1 MS. NORRIS: Correct.

2 THE COURT: So the math says there are 300-something
3 documents that I need to review, and so I don't have 300
4 documents. That's my question.

5 MS. NORRIS: Okay. Some of the documents that were
6 not tendered to the Court would have been the ones that were
7 marked as clearly attorney/client privilege. In the case of
8 Mr. Economidy, I gave him those back, so they are not at
9 issue, you know.

10 THE COURT: So how many of those --

11 MS. NORRIS: I can get the numbers for you. I don't
12 have them in front of me. And then as to other documents that
13 were not privileged, you know, again, I didn't tender those to
14 the Court. I can tender everything to the Court. The Court
15 didn't request that, so we didn't want to --

16 THE COURT: You know --

17 MS. NORRIS: -- put 900 pages --

18 THE COURT: -- apparently there's a miscommunication.
19 So I don't want to see 950 pages, because I don't need to see
20 950 pages, because if 600 and something of them were just
21 discovery materials, that's clearly not privileged. But then
22 with regard to the 300, and I'm just making up numbers because
23 I don't know the actual numbers, but with regard to the 300
24 numbers, I need to see those pages to figure out, well -- let
25 me backtrack.

1 With regard to those 300 pages, if any of those 300
2 pages were clearly sent back to the defense counsel and given
3 back, and you all are agreeing that it's attorney/client
4 privileged, and you're not passing that to the prosecution
5 team, I don't need to see those either. So whatever the
6 difference is, I need to see.

7 MR. McHUGH: I'll be happy to send them to you.

8 THE COURT: Okay. Now that we have somewhat of an
9 idea about what happened factually, let me hear from
10 Mr. Economidy as to disagreement on what the government
11 purports to be the facts.

12 MR. ECONOMIDY: Thank you, your Honor.

13 Let's start with the basics. Number one, the
14 individuals were not in cells. They were in pods, where maybe
15 20, 25 people are in there at a time. They are assigned a
16 bed. They are not assigned a specific locker. The lockers
17 are unlocked. Anyone can put something in any locker.

18 The items that were taken were not taken by Geo. I
19 have talked, and I'll represent to the Court that the
20 individual that I talked to was Assistant Warden David Seals.
21 He said, "We had nothing to do with this. We did not collect
22 anything. FBI called U.S. Marshals, U.S. Marshals called me,
23 we had nothing to do with collecting of the evidence."

24 Secondly, if you go to Mrs. Norris' statement, which
25 is attached, I believe it's Exhibit 3 to my omnibus motion, it

1 specifically states that FBI collected these items and did the
2 search. So I think there is some problems here on who
3 actually collected whatever. Rather than have someone who
4 wasn't there, such as perhaps a U.S. attorney who may or may
5 not have been there, I think we need more specific stuff.

6 With regards to my client's items that were taken,
7 the items that were taken are actually attached to my omnibus
8 motion, and I think you've seen on my motion that it has a
9 full page privileged and confidential attorney/client
10 communication and confidential work product. I don't see how
11 anybody, FBI agent or anyone else, could not draw any
12 conclusion but what that is privileged and confidential.

13 THE COURT: Well, I mean, just because it has a sheet
14 there, I mean, you can't attach a sheet like that to a bag and
15 have drugs in there and claim the whole thing is
16 attorney/client.

17 MR. ECONOMIDY: At some point you've got to trust
18 your lawyers, Judge.

19 THE COURT: Well, I mean, but the lawyers weren't in
20 the cell blocks.

21 MR. ECONOMIDY: Well, we get to talk to our clients
22 over there, you know. The way it was written, to me, was,
23 hey, you have, Mr. Economidy, put discovery in there, because
24 the eight pages of discovery that was found in the locker
25 where my client had stuff, had nothing to do with him. His

1 name is not even mentioned in that stuff.

2 THE COURT: Yeah. Now, so just so everybody here
3 doesn't get too defensive. I'm not blaming any lawyer about
4 what happened here. I mean, just because one defendant might
5 have had these records doesn't necessarily imply that that
6 person's lawyer gave them the records. I mean, it could have
7 come from some other defendant.

8 MR. ECONOMIDY: That's correct.

9 THE COURT: So I'm not casting aspersions on any
10 individual lawyer, yet.

11 MS. PLAYTON: And neither is the government, your
12 Honor, but these documents came from discovery.

13 THE COURT: No, that's clear.

14 MR. ECONOMIDY: And I have no doubt they came from
15 discovery, but I'm looking at the deep play, your Honor. If
16 we get into sentencing on a case, is my client going to be hit
17 with two points or two offense levels for obstruction of
18 justice because someone else put something else in there?
19 That's what I'm concerned with.

20 THE COURT: And so, yeah, we're putting the cart
21 before the horse. If someone pleas, if they had these
22 documents, I'm not going to claim that that was necessarily
23 obstruction of justice.

24 MR. ECONOMIDY: All right, well --

25 THE COURT: And so the other part about all of this

1 too is, so I'm unclear from what has been provided to me, how
2 many of them were the actual documents? And some lawyers
3 appeared to have summarized the documents, perhaps just word
4 by word, and maybe it's not even quite a summary, but they
5 took the FBI 302s, or whatever statements, and then put it
6 into another document and put a cover sheet on it saying,
7 here's the stuff that we received and reviewed.

8 MS. PLAYTON: Your Honor, I can't speak to that
9 because I don't know anything about what the contents of any
10 of the documents are.

11 THE COURT: Right. And so Miss Norris does.

12 MS. NORRIS: So that's a very specific -- that
13 relates to a very specific defendant in this case and I would
14 request that if we're going to address that, that that defense
15 counsel and I come to the bench.

16 THE COURT: Yeah. So, you know, all I'm suggesting
17 here is that may or may not have been a technical violation of
18 my order. I said that attorneys could discuss the
19 documents --

20 (Off the record discussion.)

21 THE COURT: That's fine. That one defendant can be
22 excused to go to the bathroom.

23 So where was I? Oh, yeah. So I said that attorneys
24 could review the documents with their client, and they could
25 discuss the documents with their client, but they just

1 couldn't physically hand the documents and leave them with the
2 client. And so someone got creative over here and said, "Oh,
3 so, since we can't leave the documents with the client, we'll
4 go ahead and summarize it or give verbatim, you know, quotes
5 and put it to the client in an attorney/client letter."

6 So my order wasn't so specific to say you can't do
7 that either. Now, by the way, that order was drafted by the
8 government, so it clearly wasn't my mistake only here. And so
9 whether that was a technical violation, or, you know, did it
10 violate the spirit of what we were trying to do? Yes, we were
11 trying to protect confidential sources and the defendants from
12 each other.

13 And so just to make sure we're very clear going from
14 this point forward, gentlemen, and lady, we're going to keep
15 the protective order in place. You can discuss with your
16 clients the discovery materials. You cannot, however, give
17 them anything from the discovery materials and leave it with
18 them, and you cannot be circumventing the order by basically
19 writing it down yourself and then passing it that way. So
20 that would be a violation of this amended protective order.
21 Just so we're clear going forward.

22 So now, Mr. Economidy, I have turned to the exhibits
23 that you referenced, and so the government did say in that
24 email, "Your client's jail cell was searched by the FBI." So
25 who searched these documents?

1 MS. NORRIS: So, your Honor, I received the documents
2 from the FBI, and so I just received them from them and I
3 assumed they conducted the search. I later found out it was
4 as it was described, that they, the people, the employees of
5 Geo, the employees of Guadalupe County Jail, Wilson County
6 Jail, did the search, and then turned it over to the filter
7 attorneys -- or the filter agents, which is who I received the
8 documents from.

9 THE COURT: Well, we still have Mr. Economidy's
10 telephone call with one of the wardens there at Geo who is now
11 disavowing --

12 MS. PLAYTON: Your Honor, my proffer is with
13 witnesses present in court who can be subject to
14 cross-examination. I don't know if Mr. Seals is present in
15 court. I've never spoken to him, but the representation I am
16 making to you today, the proffer is something that I am able
17 to back up.

18 THE COURT: Okay. So, now, who actually conducted
19 the search may not be legally relevant. So let me allow you
20 to continue, Mr. Economidy.

21 MR. ECONOMIDY: Another area I have a problem is:
22 Why is there this 51-day delay from time of seizure until the
23 time there is review by Mrs. Norris? I have a great paranoia,
24 I guess it is, that people who work in the same office,
25 whether it's the same FBI office, or in the same U.S.

1 Attorney's Office, aren't talking to each other.

2 It's commendable that they have silence, but if you
3 see leaks out of the White House and out of Congress, you know
4 people talk. In my particular case, on what I'm going to
5 describe it as the review sheet --

6 Correct me, if that's the wrong terminology.

7 MS. NORRIS: The summary of the arguments?

8 MR. ECONOMIDY: The summary.

9 In the review sheet, which is attached to my omnibus
10 motion, I think it's the third item, and it refers to, "This
11 is not privileged because of a telephone call with
12 Mr. Economy."

13 Well, the telephone call went to David Shearer, which
14 is the prosecution. So you have a mixture of the taint
15 attorney, reviewing attorney, and the actual prosecution
16 attorney. So when I see that in there, it makes me think
17 there is not total silence in this particular case because
18 they are quoting David Shearer. They are not using his name,
19 but the only person I made a phone call with that was with
20 David Shearer.

21 I also have, and have not tendered to the United
22 States, the email exchange which we have on that conversation.
23 So, you know, I'm just not real trustworthy that this didn't
24 get back into whoever is going to prosecute this case.

25 MS. PLAYTON: I would just remind, this is the same

1 lawyer who told you moments ago "You have to trust your
2 lawyers." So, you know, of course I talk to Miss Norris, but
3 we have not spoken about the contents of those documents, and
4 neither has Mr. Shearer. And I think that's what's important.

5 THE COURT: And so what's also important factually
6 now, I'm trying to figure out, so 950-some odd pages were
7 taken, but right off the bat we take away 650 or so because
8 there were the discovery materials, so I'm actually trying to
9 figure out, what exactly are we fighting about?

10 Out of the 300-some odd documents, and some of them
11 were returned to you all, does the government -- well, where
12 are we at between the taint attorney and the prosecution team?
13 How many of these documents does the government actually want
14 to use at time of trial, if we go to trial?

15 MS. PLAYTON: First, as it relates to the actual 302s
16 and the line sheets --

17 THE COURT: No. No. No. No. No. All of that is
18 discovery. All of that probably will come into trial. I know
19 that.

20 MS. PLAYTON: I'm not aware of any that -- I mean,
21 look, I've never seen the documents, so how could I evaluate
22 whether I'm going to use them? Clearly, if they are
23 conversations about, you know, the lawyer/client
24 communications, I don't know that I'm entitled to use them nor
25 do I ever anticipate using them.

1 THE COURT: And what about the notes that were taken?

2 MS. PLAYTON: I don't know of any notes that were
3 taken. Are you talking about the ones that were not -- the
4 people who did not receive notification? Oh, notes by the
5 lawyer?

6 THE COURT: No. So there were some documents seized
7 from some of the defendants that are their personal notes.
8 And the argument, as I understand it is, even though they are
9 not attorney/client privilege they could violate their rights
10 to not self-incriminate themselves, because in their notes
11 they're, in so many words, basically agreeing to their part in
12 the Hobbs conspiracy or the drug conspiracy, and so, I mean,
13 I'm trying to get to the nub of this. Are we fighting over
14 nothing, or is the government actually intending to use some
15 of that stuff?

16 MS. PLAYTON: Your Honor, okay, I don't know that any
17 of those types of things exist, number one.

18 THE COURT: So assume with me that those things
19 exist.

20 MS. PLAYTON: I do not -- unless there is a threat or
21 some sort of plan to try to harm somebody or obstruct justice
22 in some way, we do not intend to use personal notes or
23 anything like that.

24 THE COURT: Now, let me just give you a hypothetical.
25 Defendant number X wrote in his cell, you know, "I joined the

1 Mexican Mafia here. I'm going to always be a member. I'm
2 proud of all the drugs that we made and the amount of money we
3 got out of the dime." Let's just say that's the hypothetical.

4 Do you intend to use that at time of trial against
5 that defendant?

6 MS. PLAYTON: I mean, well, of course, I would want
7 to use something like that, but I don't know if it exists.

8 THE COURT: Right. So then we have to go through the
9 legal analysis. So while I've got you up here, Mr. Economidy,
10 I mean, so you wrote a lot, and I appreciate your comments
11 about the Trump Administration, but they are kind of
12 irrelevant to here.

13 MR. ECONOMIDY: Merely demonstrating.

14 THE COURT: Yeah. Well, you know, but you didn't
15 cite to me any law. So, I mean, where does a pretrial
16 detainee have a reasonable expectation or privacy that I must,
17 you know, give acknowledgment to?

18 MR. ECONOMIDY: Well, he doesn't have a right of
19 privacy under Fourth Amendment. I've cited those case in my
20 omnibus motion.

21 THE COURT: Does or does not?

22 MR. ECONOMIDY: Does not. Does not.

23 THE COURT: Right.

24 MR. ECONOMIDY: But we're not basing our argument on
25 the Fourth Amendment. We're basing our argument on the Sixth

1 Amendment right to effective assistance of counsel. What this
2 case has done has basically drawn a wedge right between me and
3 my client. And I'm not happy about it.

4 THE COURT: Let me talk to you about that. So the
5 denial of the Sixth Amendment, effective counsel, I mean, I'm
6 letting you show the documents to your client. I'm letting
7 you guys talk about the documents. Nothing is prohibited
8 there. The only thing I'm prohibiting is letting you leave
9 the document with your client. So how is that denying your
10 client effective counsel?

11 MR. ECONOMIDY: He doesn't have that degree of
12 assurance that what I do in my case is not a part of the
13 government's operation, rather than a loyal defense attorney
14 who has vowed to give him a vigorous defense.

15 The other part is, is that we have, basically I want
16 to call it a Chinese Wall. I don't think they can create a
17 Chinese Wall through a review attorney. The law that I read
18 is that you adopt the law of the forum. And that came out in
19 RE: Itron, I-T-R-O-N, Fifth Circuit, February 21st of this
20 year.

21 Now, I don't know if that was a diversity case. When
22 I read it, I can't determine that, but it talks about when you
23 use conflict laws and ineffective assistance of counsel, then
24 you're going -- the Chinese Wall concept, you're going to
25 apply local state law. And under Texas law, *Petroleum*

1 *Wholesale versus Marshall*, 751 S.W. 2d 295, 299, 300, Texas
2 *Appeals, Dallas*, 1988, there is a conclusive presumption that
3 the attorney who has got the confidential information has
4 shared it with other individuals in their office.

5 THE COURT: Those are all civil cases?

6 MR. ECONOMIDY: That particular case is a civil case.

7 Now, I can give you a criminal case, and that, to me,
8 is *Arizona versus Roberson*, 486 U.S. 675, 1988. It's not
9 really a Chinese Wall case, but it is a case of a defendant
10 exercises his right, I can't remember whether it's silence or
11 to an attorney, to one set of police, and then the second set
12 of police came in and did the same thing and he did not assert
13 his rights then. And the Supreme Court says you're tainted.
14 Once you have asserted your right with the first group, the
15 second group is tainted. Now, that's the closest that I can
16 get by analogy.

17 THE COURT: So, if you can, you are welcome to submit
18 a letter brief to me and see if you can distinguish these
19 cases. One is called *Jarmin*, J-A-R-M-I-N, 847 F.3d 259. It's
20 out of the Fifth Circuit, this last year, 2017, and it seems
21 to allow these taint counsel. So please take a look at that
22 case and see if you can --

23 MR. ECONOMIDY: I'll be glad to.

24 Now, what I have done is I've gone through the U.S.
25 Attorney's Manual and through the U.S. Attorney's Criminal

1 Resources Manual and I see no authority for it there
2 whatsoever.

3 THE COURT: As you know, I'm bound by the Fifth
4 Circuit, so if you can take a look at that case and see how
5 you can distinguish it.

6 Now, if he has no expectation of privacy under the
7 Fourth Amendment and you are relying upon the Sixth Amendment
8 right of counsel, are there any other issues that you are
9 concerned about that you --

10 MR. ECONOMIDY: I think the whole thing is outrageous
11 government conduct, which violates the Fifth Amendment due
12 process clause. So I have two prongs of the Constitution that
13 are applicable here. Now, I'll be the first to admit, there
14 is very few cases that have actually found outrageous
15 government conduct, other than the one Supreme Court case
16 thirty years or so ago.

17 THE COURT: Now, assume with me, you know, so we have
18 the protective order, so some of the discovery material was
19 not to be left with the defendants. So isn't that contraband?

20 MR. ECONOMIDY: In my judgment, absolutely. The only
21 place where I have a gripe is they are taking my confidential
22 stuff, which is clearly marked privileged and confidential.

23 THE COURT: Okay. Any last words?

24 MR. ECONOMIDY: No, sir.

25 THE COURT: Thank you, sir.

1 MR. ECONOMIDY: Thank you, sir.

2 THE COURT: Anybody else here who filed that motion
3 want to -- Mr. Morris.

4 MR. MORRIS: Thank you, your Honor, may I?

5 THE COURT: Yes.

6 MR. MORRIS: As the guilty party who kicked the ant
7 bed initially, I had two things that I was asking for in my
8 motion. Number one is appointment of a special master so that
9 your Honor doesn't have to be the one to conduct this review.

10 And, number two, to remove that evidence out of the
11 AUSA's office, because, quite frankly, they are subject to the
12 same rules that all of us are. The Texas Rules of
13 Disciplinary Procedure do not allow one attorney in an office
14 and another attorney in office to pretend to not be in the
15 same office.

16 THE COURT: So, you know, let me give you -- if you
17 didn't take it down, help me understand what's the difference
18 with *Jarmin*, 847 F.3d 259, and then a case out of the Southern
19 District in Houston, 2006 Westlaw 1881370, and they both seem
20 to allow for taint teams. So, I mean, I'm not sure how they
21 were doing that.

22 MR. MORRIS: I don't know either. I'll have to take
23 a look at that for you, your Honor. All I know is 28 U.S.C.
24 530(b) says they play by the same rules as every other Texas
25 attorney, regardless of the fact we're in federal court,

1 regardless of the fact they are jurisdictionally under the
2 authority of the Department of Justice. The fact is, they are
3 Texas attorneys in Texas, and Chinese Walls have not been
4 permitted since quite a ways back.

5 THE COURT: And so that's --

6 MR. MORRIS: Primarily in civil cases.

7 THE COURT: I know that's the case in civil cases,
8 but what happens in criminal cases?

9 MR. MORRIS: Because nobody has ever done it, quite
10 frankly. And I'm going to go look at the cases you're
11 referring me to, but when we're digging through the records,
12 we're not finding instances where people at the Fifth Circuit
13 are jumping up and down and saying, "Wait a minute, half of
14 our office is reviewing this and half of them aren't."

15 And when you hear testimony about "We're going to
16 hand you back your privileged documents," well, welcome to
17 2018. They have scanned them. They have copied them. They
18 have analyzed them. They are in a database there at the
19 office of the U.S. Attorney's.

20 THE COURT: We don't know that. Miss Norris is
21 shooked her head no.

22 MR. MORRIS: Okay. Sure.

23 So my other problem then is, I have clients who are,
24 as you are going to see when you open that packet, probably
25 the most educated clients in any case. I put myself in that

1 box and I say, "If it was me sitting at that cell, what would
2 I want to review?" Your question to Mr. Economidy was, "How
3 is it that this protective order allowing you to go sit and
4 pass mail through a slot about that thick and talk through a
5 piece of glass about that thick, isn't sufficient basis for
6 them to understand the evidence in this case?"

7 THE COURT: So, I mean, if you wanted to actually
8 leave it with them, then why did you wait six months? Why
9 didn't you file a motion with me saying, you know, "I want
10 relief from this protective order." Why did we wait all this
11 time?

12 MR. MORRIS: We have done that in other cases and
13 have been frustrated, to some degree, in the ability to
14 provide that because of the concerns the court has. I will be
15 the volunteer to tell you I was the creative attorney who said
16 "I'll summarize what I see."

17 But my client has explained to me, he needs more than
18 an hour once a week to sit there and go through the evidence.
19 He needs to digest it, think about it, figure out what his
20 problem with it is, or his acceptance of it is. He needs more
21 than just time with me.

22 THE COURT: And so how do I balance -- I mean,
23 because there was purportedly -- and I'm not saying your
24 client did it, I don't even who did it -- but purportedly
25 there was a leak outside Geo, and Wilson, and wherever else

1 everybody is being held, to another BOP facility and there was
2 a disclosure made about who was an informant. I mean, so how
3 do I strike this balance about protecting informants? And so
4 how do I do this?

5 MR. MORRIS: Absolutely. And that's what --
6 Mr. Economidy and I have had discussions about this, because
7 there is a legitimate concern there. Nothing of what my
8 client possessed was an actual BOP record or something, DEA
9 record or something, a 302, he had none of those.

10 In jail parlance, that is gospel. When you've got
11 the DOJ's signature at the top, that's what happens.
12 Something an attorney writes, I think, falls far, far below
13 that in its ability to communicate to somebody at another
14 facility at some other relationship to the Texas Mexican
15 Mafia, but there is never anything this Court can do to stop a
16 defendant here from talking to somebody in their family who
17 calls somebody at the BO -- the relaying of information, which
18 is all you heard evidence about, that was all the proffer was,
19 is the relaying of information, not discovery, not actual
20 records, just the relaying of information. You can't stop
21 that. Now, one mechanism --

22 THE COURT: Hold on. I'm going to make sure I
23 understand what you are saying.

24 So, Ms. Norris, other than the synopsis, I mean, was
25 any actual discovery document found among these seven cells?

1 MS. NORRIS: There were 302s. There were line
2 sheets. There were confidential human source reporting
3 documents. There were a lot of documents that were the copies
4 of the original government documents. Not in this particular
5 case. And again, you know, we can talk here. We can talk in
6 camera about this specific case with Mr. Morris, or at the
7 bench, whatever the Court wants --

8 THE COURT: Yeah, no.

9 MS. PLAYTON: -- because there is some clarification
10 that I need to get into on that.

11 THE COURT: And thank you.

12 So I just want to make sure I understand what
13 Mr. Morris did, is he just made synopsizes. But the
14 government's representation is actual documents were found in
15 the cells?

16 MS. NORRIS: Yes.

17 THE COURT: Okay.

18 MR. MORRIS: Right. And I didn't mean to
19 misrepresent. Not found at the BOP.

20 THE COURT: Right. No, these cells. Yeah.

21 MR. MORRIS: They didn't move this from here to the
22 BOP.

23 THE COURT: You know, it's a balance. So I was
24 saying, you lawyers, you can show the documents to your
25 clients, because I understand you have to talk to them about

1 what the evidence is in this case, or the alleged evidence,
2 and you need to show that to them. And so I wanted to make
3 sure that you were able to do that.

4 MR. MORRIS: Yeah.

5 THE COURT: And I wanted to make sure that you were
6 able to talk to them about that. But, again, this Sixth
7 Amendment ineffective assistance, I mean, if you could show it
8 to them and talk to them about it, how is it a violation of
9 the Sixth Amendment?

10 MR. MORRIS: And to some degree, your Honor, it's an
11 issue of practicality. We did an analysis of the number of
12 megabytes that are produced to us in discovery just in this
13 case. And what you're looking at is about four or five
14 40-hour weeks in order for a defendant to see every piece of
15 evidence produced by the government in this case.

16 Is the Court telling us, to everyone here, "You must
17 go and spend four 40-hour weeks at Geo, so that your client
18 can be educated enough to make a decision in this case
19 regarding the evidence there?" Surely not.

20 THE COURT: Well, no. The answer is you need to
21 spend a reasonable period of time to confer with your client
22 so they can make meaningful decisions about their case. And
23 so now we'll get to gripes about attorney performance here in
24 a little bit, but because some of the defendants here have
25 gripes about how their lawyers have not been spending enough

1 time, but we'll get there in a moment.

2 MR. MORRIS: Sure. But that's my problem with the
3 Sixth Amendment. And that's my client's problem with the
4 Sixth Amendment. He is not required to --

5 THE COURT: But good, effective lawyers don't have to
6 repeat 40 hours. You digest for them in a meaningful way all
7 the evidence that's been assembled against them and you tell
8 them, "Here's the problem points for us, and here are good
9 points for us."

10 MR. MORRIS: Of course.

11 THE COURT: And so --

12 MR. MORRIS: Of course, your Honor.

13 THE COURT: My order did nothing to do stop you from
14 doing that.

15 MR. MORRIS: I understand that. And I'm not saying
16 that somehow everything contained to every other defendant has
17 to be portrayed to every defendant. I'm not saying that.
18 What I'm saying is every defendant learns differently. Some
19 learn orally. Some learn visually. Some learn by repetition.
20 That's what the protective order prohibits from occurring.

21 THE COURT: So, again, though, if some of your
22 clients need to see the documents and hold the documents for
23 some period of time, again I go back to my question that I
24 don't think I got an answer, why did you wait until this whole
25 situation arose? Why didn't you ask me to amend the

1 protective order?

2 MR. MORRIS: You're right, your Honor. In this
3 individual case, I could have brought a motion to amend the
4 protective order. And that is the alternative request we are
5 asking in my motion that was filed.

6 MS. PLAYTON: The reason why what you are suggesting
7 is important is because part of the reason it came to our
8 attention is that lawyers who are in compliance with your
9 protective order, who are taking the time to review the
10 documents, to parse it down, to find out what is relevant and
11 what their clients probably really need to know, and what they
12 probably don't really need to know, and going through those
13 materials and meeting with their clients, are hearing from
14 their clients, "Wait, why can't I get the line sheets? This
15 guy over there's got the line sheets. He's got the 302s. I
16 want to see that stuff. Why can't I have them?"

17 And we have heard that several times from several
18 different attorneys, and so that's why this -- the whole
19 reason this is important is not just because of the Court's
20 order, but because we have witnesses and source reporting that
21 we need to protect, and so that's the reason this Court issued
22 the order and why all of the attorneys have been making very
23 strong attempts to comply with it.

24 And so I'm somewhat frustrated. It seems he's being
25 rather -- seeming as if this is rather nonchalant, but I think

1 this is very important for a variety of reasons.

2 THE COURT: So what I need to get from the government
3 is I want a response from you-all about the Texas Rules of
4 Disciplinary Procedure and find out whether or not you-all are
5 prohibitive from a taint wall or not.

6 MS. PLAYTON: No. It's my understanding, and, you
7 know, I did not find the provision before, but when it comes
8 to government lawyers, it is specifically allowed in the Texas
9 ethics rules. And it's because it recognizes that the
10 government, by virtue of the fact for it to function would
11 have to be able to sometimes separate out different functions,
12 and so...

13 THE COURT: I've not seen any of that law, so you-all
14 provide that to me and explain for me why legally the taint
15 separation here is proper.

16 MS. PLAYTON: And in addition to the Fifth Circuit
17 acknowledging the use of taint teams and upholding its use,
18 there are numerous district courts within the state of Texas
19 that have upheld them.

20 THE COURT: You can brief that too.

21 MS. PLAYTON: Okay.

22 THE COURT: Counsel.

23 MR. SWITZER: Robert Switzer, your Honor.

24 A point of clarification on the protective order, I
25 discussed this issue of the voluminous amount of discovery

1 with my CJ representative and he said we could mail disks to
2 the Geo law library, our client could review them there on the
3 computer. Now, what I'm hearing is that this might be
4 prohibited.

5 THE COURT: So I'm not familiar. That's the first
6 time I've ever heard that Geo has been willing to do anything
7 like that.

8 MR. SWITZER: Apparently in the last Mexican Mafia
9 case with attorneys here and our CJA representative, that's
10 what they did because of this --

11 THE COURT: Are you talking about Convery?

12 MR. SWITZER: Yeah. I just didn't want to throw him
13 under the bus, if it wasn't proper.

14 THE COURT: So, you know, why don't you and
15 Mr. Convery and the government talk, and if that's a possible
16 work-around -- I don't know whether it is. In the past Geo
17 has been very reluctant to allow computers and use in past
18 cases. So why don't the three of you all talk. If Geo is
19 willing to do that, I'm assuming then Geo becomes the --
20 retains the CD?

21 MR. SWITZER: The CD, it's my understanding, the CD
22 is not permitted out of the law library. They can make notes
23 and presumably handwrite everything out, although it would
24 take a millennium. But they could review it on the computer,
25 so our clients don't have to take our word.

1 And, plus, we aren't going to understand what is
2 important. They -- I find out so many things that I didn't
3 realize were important for my client when I showed him. And
4 we can't print out everything because it would be a
5 staggeringly large amount of paper.

6 THE COURT: So for now, my amended protective order
7 is still in place. You-all talk and let's get some
8 representation from Geo about what they are willing to do, and
9 if they are willing to do that I'm willing to amend my
10 protective order.

11 MR. LEACHMAN: Can we speak to that, Judge, because
12 one of the things that's important, and one of the things
13 Mr. Morris said that is absolutely true, is when he said,
14 "These documents are the gold standard to these defendants,"
15 that exactly right, because when they have the 302 with the
16 snitch's name on it, that's when people get killed.

17 And so we are absolutely opposed to whether that goes
18 to them in electronic or in any other form because they can
19 convert that into this very purpose, that the entire reason we
20 go to the trouble of getting these protective orders from the
21 inception. We would absolutely oppose that, Judge.

22 And just by way of background, in cases like this in
23 other jurisdictions, the answer isn't just a protective order
24 that says that they can't turn documents over to the
25 defendants. The cases, the other cases said they had to come

1 to the office to review them, that even the lawyers can't have
2 copies of those cases.

3 And we have made accommodations at the front end of
4 these cases in order to give them the opportunity to do that,
5 but the argument is absurd that, "Oh, we've got to sit down
6 and spend four weeks with them." They clearly don't need to
7 do that. They are not on every call. They don't need to hear
8 every single irrelevant thing that doesn't apply to each of
9 their defendants.

10 THE COURT: Okay. We're mixing apples and oranges.
11 So with regard to the opposition, though -- and you-all
12 drafted this order, so...

13 MR. LEACHMAN: I understand that, Judge. And
14 frankly --

15 THE COURT: Let me finish. Let me finish.

16 So if we're allowing them -- we're allowing the
17 lawyers to meet with their clients and show them the documents
18 and allow them to talk to their clients about the documents,
19 then aren't they already taking notes, and so what's the
20 difference between that procedure and letting them use the Geo
21 law library and reviewing the materials?

22 MR. LEACHMAN: Because the Geo law library has the
23 actual copies of the 302, whether they are scanned in as PDFs,
24 or whether they are given to them as a physical copy.

25 THE COURT: But they aren't going to print them out;

1 are they?

2 MR. LEACHMAN: Well, they might.

3 THE COURT: All I'm asking you-all is just confer
4 with each other with Geo and see if this is a feasible remedy.

5 MS. PLAYTON: I was just advised, your Honor, in that
6 case Mr. Convery's client printed documents out and they were
7 then distributed. And, in addition, in that case witnesses
8 were threatened with death. And so it was not --

9 THE COURT: So isn't the remedy there just taking out
10 the printer?

11 MS. PLAYTON: Well, the problem is that Geo can't
12 be -- the people that are there cannot -- they are not law
13 enforcement. They don't understand what's important, what's
14 not important. Your Honor entered an order that they can't
15 have these documents. If you allow them to receive those
16 disks, then you're giving them the documents. There is no way
17 to control who is with them, who is next to them, who they
18 show it to, and if they print it out. I don't know that there
19 is anyway to control that.

20 THE COURT: But my last question was, it poses the
21 same problem with your current draft.

22 MS. PLAYTON: No. The current draft says they cannot
23 have the documents.

24 THE COURT: No. No. But it says the lawyers can
25 show them to them.

1 MS. PLAYTON: Yes.

2 THE COURT: And it says the lawyers can discuss with
3 them. So what prohibits them from taking notes right then and
4 there?

5 MR. LEACHMAN: I've got no problem with them taking
6 notes, because then if they are going to go try and get
7 somebody to put a hit on somebody, they have to give them
8 their handwritten notes, and now it's their word of what was
9 in the documents, it's not a government document. That's a
10 big difference.

11 THE COURT: Okay. So again --

12 MS. PLAYTON: Because like we're here today, your
13 Honor, we don't know where these documents came from.

14 THE COURT: I've heard enough. Thanks.

15 So the amended protective order that I verbally
16 stated is still in place. You-all are instructed to confer
17 with Geo and the CJRA rep and discuss what, if any,
18 alternatives may be available. I'm not ordering anybody to
19 adopt it. I'm saying confer, and if an agreement can be
20 reached, then I'll entertain an amendment to this order. And
21 if you can't reach an agreement, I'll hear from both sides and
22 we'll figure out what to do next.

23 Counsel.

24 MR. McDONALD: Yes, Judge.

25 Geo does have access to the DVDs that they can go in

1 the library and review. I don't know about printing or
2 anything. My problem is my client is in custody in Guadalupe
3 County, they don't provide that discovery service, so I would
4 request that my client be moved to Geo so he can have equal
5 access to the information that the other defendants have.

6 THE COURT: Well, at this point, we haven't
7 implemented it at Geo yet.

8 MR. McDONALD: Well, they have. I've had cases --

9 THE COURT: No, but I haven't ordered it in this case
10 yet.

11 MR. McDONALD: Well, if you do, Judge, would you
12 consider having my client, Mr. Cantu, transferred to Geo?

13 THE COURT: I'll of course consider it, but I mean at
14 this point not everybody is going to fit in Geo, and I have no
15 control -- I mean, everybody thinks I have all this power; I
16 don't. And so I cannot tell the BOP where to put prisoners.
17 I just can't. And if they choose to keep them segregated for
18 whatever safety reasons, I can't do anything about that. I
19 can make suggestions, but I can't order them to do it.

20 MR. McDONALD: I'm just relaying my client's
21 concerns.

22 THE COURT: Thank you.

23 MR. McDONALD: Thank you, Judge.

24 THE COURT: Mr. Cazier.

25 MR. CAZIER: If I may, your Honor.

1 I'm one of the three lawyers that does have a motion
2 on this shakedown issue. My case is different. I filed a
3 motion to suppress based on Fifth and Sixth Amendment grounds
4 as to personal notes that were seized from my client.
5 However, I have an email from Miss Norris in which she tells
6 me that she has received no documents from my client, whose
7 name is Ramiro Carrizales, that's defendant number 13.

8 However, I'm requesting an evidentiary hearing so
9 that we can explore, at least, the fact that he did have
10 personal notes, they were case related, they were attorney
11 discussion related, that have not been returned to him. I can
12 see that they never went to the U.S. Attorney's Office, but
13 they went somewhere, and we would like to have an evidentiary
14 hearing on that.

15 THE COURT: So, Miss Norris, you gave me nothing on
16 defendant 13.

17 MS. NORRIS: Because I received nothing on defendant
18 13.

19 THE COURT: So where was defendant 13 being held?

20 MR. CAZIER: Geo, seventh floor.

21 THE COURT: And so, I mean, if they took a bag out of
22 everybody, what happened --

23 MS. PLAYTON: They did not take a bag out of
24 everybody. They took various bags. They were not -- it was
25 not everybody, is my understanding.

1 THE COURT: So let me just ask the question this way:
2 Is there a bag on defendant number 13?

3 MS. PLAYTON: I don't know if a bag by Mr. Carrizales
4 was provided. I can tell you no documents attributable to
5 Mr. Carrizales are in the government's possession related to
6 that search, and so we don't have any notes that we intend to
7 use.

8 So if he wants to seek to suppress something, we're
9 not intending to offer. If he has a question about how the
10 jail handled his client's private notes, then I think his
11 remedy is with the jail. I mean, we don't have them. We did
12 not seize them. The jail conducted their search, and if they
13 were ever in a bag in the -- reviewed by the taint team, they
14 were left there because they were not provided to Miss Norris.

15 THE COURT: So let me get a response from the
16 government on defendant number 13.

17 MS. PLAYTON: It's document number 732 is his motion
18 to suppress.

19 THE COURT: Thank you. So respond to 732, and just
20 state in writing for me what the government's position is. If
21 you have no documents, then the motion to suppress will be
22 denied as moot, but tell me whether or not you received a bag,
23 and then explore with Geo: Did they seize anything from that
24 cell? And, if so, what did they do with it? And if they have
25 anything, what do they have? And when is it going to be

1 returned to the defendant or his counsel?

2 MR. CAZIER: Your Honor, may I just say one more
3 thing?

4 THE COURT: Yeah.

5 MR. CAZIER: Apparently my client's situation is not
6 unique because I heard several of my colleagues stand earlier
7 this afternoon and say exactly the same thing --

8 THE COURT: Yeah.

9 MR. CAZIER: -- that personal notes were seized and
10 not returned.

11 MS. PLAYTON: The problem with having the U.S.
12 Attorney's Office now go back and try to get personal notes
13 that these attorneys are claiming contain confidential
14 communications is we're creating an issue. But we've never
15 seen these documents, nor do we intend to use them because we
16 don't have them.

17 THE COURT: So all I'm asking from you all -- so
18 Mr. Cazier raised a good point. So this goes beyond 13. It
19 goes to 37, 10, 11, 19, 3, 36, 7, 27, 6, 4, 8, and I think I
20 missed a couple.

21 MR. SWITZER: 16, your Honor.

22 THE COURT: Thank you. 16.

23 And so if you don't have anything, the government
24 just needs to say, "We have no documents from there." And
25 then, if most of these are Geo, what I want to know, and what

1 the defendants want to know, and what their lawyers want to
2 know, is what happened to this stuff?

3 And, yeah, we can file administrative grievances with
4 Geo. We can do this the hard way or we can do this the easy
5 way. And I would suggest to you-all the easier way is just to
6 ask Geo and everybody else, what did you do with these bags
7 that we didn't get?

8 Mr. Mulliner.

9 MR. MULLINER: Thank you. May I approach the podium?

10 THE COURT: Yes.

11 MR. MULLINER: Your Honor, this Jeff Mulliner with
12 respect to Ricky or Ricardo Escobedo, defendant number 10 in
13 this indictment. I believe that his seizure of his cell falls
14 into the category where the Court has a concern. He is not
15 somebody that had something that's obviously discovery. He is
16 not somebody who's had items returned to him that are
17 obviously attorney/client privilege. So he falls into the
18 realm where the Court has to make a decision.

19 And the description by the taint team attorney,
20 Miss Norris, indicates that it was a single line piece of
21 paper with handwriting on it. Her conclusion was calculation
22 of commissary expenses, question mark, notes appearing to
23 relate to case.

24 And my particular concern is, "notes appearing to
25 relate to case." I believe that that's relates to a visit

1 that he's had with me, and so I just wanted to bring to your
2 attention that this is an item that we are seeking its return.
3 We are seeking that it not be forwarded to Mr. Gibson or to
4 Miss Playton. And that's all.

5 THE COURT: So with regard to Mr. Escobedo's matter,
6 and anybody else in these seven -- again, if I need to see
7 this document, and I don't have this one here, if I need to
8 see the document to make a ruling, produce it to me for a
9 ruling. If the government is not going to use it, just return
10 it and say it's not going to be used.

11 MS. PLAYTON: Miss Norris actually reached out to
12 many lawyers, and including, I think, Mr. Mulliner and said,
13 if you want it back, just let me know. And I don't know if he
14 responded.

15 MS. NORRIS: If you want to assert a privilege. And
16 I did not hear back from Mr. Mulliner.

17 But I have it with me, Mr. Mulliner, if you would
18 like to look at it and decide if you want to assert a
19 privilege.

20 MR. MULLINER: I assert a privilege.

21 THE COURT: Why don't you look at it first before you
22 start asserting privileges?

23 MR. MULLINER: Sure.

24 THE COURT: Okay. Thank you.

25 All of that is under advisement.

1 Next thing. Motion for pretrial of Jencks material,
2 Mr. McCrum's motion.

3 What's the government's response?

4 MS. PLAYTON: This is something that your Honor
5 routinely orders. I would just ask that you do it in
6 accordance with your normal court orders.

7 THE COURT: So that's going to be granted and we'll
8 figure out how that puts out into the scheduling order.

9 Next is motion for exculpatory and impeachment
10 evidence, Mr. McCrum's motion. So there he's asking for
11 basically nine categories of documents.

12 What's the government's response?

13 MS. PLAYTON: Your Honor, I did not know that the
14 Court was going to take up all of the motions, so I have not
15 seen that. If it's routine and it's just the regular request,
16 I would ask that you take it up with your normal scheduling
17 orders.

18 THE COURT: So I'm not going to rule on that yet.
19 I'm going to allow you-all to confer on that, what you can
20 agree to, because some of this may or may not be the usual
21 material that you give out and so we'll figure that out later.

22 Okay. Next big topic, complaints about lawyers. So
23 who is Victor Garcia's attorney?

24 DEFENDANT VICTOR GARCIA: He's not here.

25 THE COURT: So that's one big problem. He's not

1 here.

2 Mr. Garcia, when is the last time you talked to your
3 lawyer?

4 DEFENDANT VICTOR GARCIA: The day they first
5 appointed him to me. He told me he was going to be my
6 attorney and come talk to me, and that's it.

7 THE COURT: So give me a month and a date, or a year.

8 DEFENDANT VICTOR GARCIA: Nine months ago.

9 THE COURT: You haven't seen him in nine months?

10 DEFENDANT VICTOR GARCIA: (Shaking head.)

11 THE COURT: Do you want me to send your matter up to
12 the magistrate to get appointed a new lawyer?

13 DEFENDANT VICTOR GARCIA: Yes, sir.

14 THE COURT: So Mr. Garcia's oral request for a new
15 counsel is referred to the magistrate judge.

16 Next one. Fernando Gonzalez. Who is Mr. Gonzalez's
17 lawyer?

18 MR. VELA: I am, your Honor.

19 THE COURT: So when's the last time you talked to
20 your client?

21 MR. VELA: I have been -- it's been a few months,
22 your Honor. I'll suggest that to the Court. I have talked to
23 his family. They have called my office. I've told them I am,
24 and I am, going to go visit Mr. Gonzalez. Again, I want to go
25 visit him when I have kind of all my ducks in a row and start

1 that process with all my -- he and I have talked as to the
2 initial complaint and what the government is alleging his role
3 was in this, and that happened a few months back. I will
4 inform the Court that.

5 But where we are as to his exact numbers and
6 sentences and guidelines, I have not gotten into that. I
7 think that's what he wants and I'm not there yet. There are
8 some other issues that make his case a little bit different.

9 THE COURT: So, Mr. Gonzalez, do you still have
10 confidence in your lawyer? Do you want me to refer you for a
11 new lawyer?

12 DEFENDANT FERNANDO GONZALES: It's been ten months,
13 sir. I want a new one.

14 THE COURT: You want a new lawyer?

15 MR. VELA: I won't oppose that, your Honor. That's
16 fine.

17 THE COURT: Well, I'm not going to rule on that.
18 That's going to go up to the magistrate judge for appointment
19 of new counsel, and so that's referred.

20 Who is Joe Perez's attorney?

21 DEFENDANT PEREZ: He's not here.

22 THE COURT: Is your client -- is your lawyer
23 Mr. Huffman?

24 DEFENDANT PEREZ: Yes, sir.

25 THE COURT: And so, Mr. Gilmore, where is

1 Mr. Huffman?

2 MR. GILMORE: Mr. Huffman is stuck in Mexico today,
3 Judge. He flew down there was and was scheduled to fly back
4 and was on standby for a flight back but wasn't able to get on
5 a flight for whatever reason. His flight is scheduled to
6 return on Wednesday, I believe.

7 THE COURT: So are you retained, or are you court
8 appointed?

9 MR. GILMORE: I just work in Mr. Huffman's office.

10 THE COURT: So is Mr. Huffman retained or court
11 appointed?

12 MR. GILMORE: Court appointed, Judge.

13 THE COURT: So, Mr. Perez is alleging that
14 Mr. Huffman has told him that he does not get paid to go to
15 Guadalupe County. That's just wrong. I mean, if defense
16 counsel are traveling to where these defendants are being
17 held, that's compensable time.

18 So I don't know whether Mr. Huffman said that or
19 didn't say that, but attorneys, you know, you-all know that
20 you need to be reasonably conferring with your clients and
21 meeting with them, and if you travel to the facility, that's
22 compensable.

23 Mr. Perez, do you want me -- do you still have
24 confidence in Mr. Huffman, or do you want me to refer your
25 matter over?

1 DEFENDANT PEREZ: I would like to get another one.
2 He came and asked me -- he told me he came back from Mexico.
3 I guess he's on his way back from Mexico again.

4 THE COURT: I don't know what he's doing in Mexico.
5 So Mr. Perez's verbal request for a new attorney is
6 referred to the magistrate judge.

7 Okay. Now, the status of discovery. Has the
8 government produced all the evidence it believes it is
9 required to produce?

10 MS. PLAYTON: There are several cell phones that,
11 first, they are the ones that were just recently seized, we
12 are still going through those. There are some -- the phones
13 were made available to the defense attorneys, and I believe
14 there may be some additional discovery issues --

15 DEFENSE COUNSEL: Your Honor, we can't hear.

16 MS. PLAYTON: The cell phones that were seized --

17 THE COURT: So let me backtrack so they could hear
18 you. So I asked about the status of discovery.

19 MS. PLAYTON: Okay. So the answer is: I believe
20 we've turned everything over. The exception is the cell
21 phones that were just recently seized in December, those are
22 still undergoing analysis. We have made the searches of the
23 other cell phones available at the FBI office to the defense
24 attorneys. And I believe there is some discovery that we
25 still need to turn over related to some of the defendants, in

1 addition to what your Honor ordered today.

2 THE COURT: And so when are you going to complete all
3 of that remaining discovery and have it available for the
4 defense attorneys for inspection?

5 MS. PLAYTON: Within the next couple of weeks, your
6 Honor.

7 THE COURT: Anybody want to respond?
8 Mr. Dombart.

9 MR. DOMBART: George Dombart for Raul Ramos.

10 In reference to that, you know, we have, I think
11 about 78,000 pieces of discovery, when you count all the line
12 sheets and everything, at least when I do the get info on my
13 computer. And then they are asking us to go to the FBI office
14 too, to go look at some other phones too. And so, and you
15 know they are making us go through that hoop also.

16 You know, I'm sure a lot of us are still working
17 through a lot of that discovery, and then to take time away to
18 go to the FBI office, I think they should, if they have got
19 the calls, they should just go ahead and go through them and
20 start providing that to us too.

21 THE COURT: Well, I'm not sure I understand what you
22 are asking for, Mr. Dombart. They said they are going to have
23 everything for you in two weeks. What are you asking for?

24 MR. DOMBART: Well, because they have certain phones
25 that we were requested to go view at the FBI office.

1 THE COURT: Oh, so you want whatever reports of the
2 existing phones copied and made available to you-all?

3 MR. DOMBART: Exactly, your Honor, instead of us
4 having to go to the FBI and to go round and round about it.

5 THE COURT: So what's the government's response on
6 that?

7 MS. PLAYTON: Your Honor, it's not feasible, because
8 it's over 25 gigabytes of information, for us to duplicate
9 that 37 times or 35 times. It's just not feasible, which is
10 why we made it available to defense.

11 THE COURT: How many phones are we talking about?

12 UNIDENTIFIED FEMALE SPEAKER: 278.

13 THE COURT: 278 phones. And so you downloaded 278
14 phones and now you have printouts of the entire downloaded
15 contents?

16 MS. PLAYTON: I believe it's -- no. We have digital
17 copies.

18 THE COURT: It's digital version?

19 MS. PLAYTON: Yes, your Honor.

20 Is that correct?

21 UNIDENTIFIED FEMALE SPEAKER: That's correct.

22 THE COURT: So if it's digital version, why isn't it
23 as easy as emailing to all of these guys?

24 MS. PLAYTON: No. No. Your Honor, it wouldn't go.
25 I don't know if you've had this experience, we cannot email I

1 think more than -- our limit is very -- it's very limited.
2 You couldn't even -- I don't know how many hard drives you
3 have to --

4 THE COURT: Okay. So let's scratch that idea. Then
5 why can't you just burn it on a CD and make 38 copies?

6 MS. PLAYTON: Well, because it's not feasible, your
7 Honor to do it. We've made it available to them. And I don't
8 know -- not everybody needs it and not everybody has made the
9 some complaint. Now that we're in a room together, I suspect
10 a bunch of people are going to stand up. But at this point,
11 nobody has complained about this and it has been made
12 available --

13 THE COURT: So let's make sure I understand this.
14 You have a digital download of 200-something phones. Is it
15 one file? Was it one megafire, or is it 207 individual files?

16 UNIDENTIFIED FEMALE SPEAKER: Correct. Each phone
17 that's able to be downloaded has its own report. And if you
18 put all of that together, I have with -- one attorney had
19 indicated they were going to bring me a thumb drive and I
20 would download for their client what was relevant to their
21 client and provide that. I've not received that yet, but we
22 can do that. But if they want everything, it would take
23 probably a very large external hard drive, which we can do
24 that if they would like that.

25 MS. PLAYTON: They would have to provide that, first

1 of all. The government cannot buy -- the external hard drives
2 are between 50 to \$100, so they would have to provide those to
3 us so that we could then burn them. But we've made it
4 available. Some attorneys have made requests to say, "Hey,
5 this is how I want to see it, can you do it this way?" But
6 they have not followed up on it, I think is what the agent is
7 indicating.

8 THE COURT: Mr. Dombart.

9 MR. DOMBART: There have been other cases where we,
10 you know, I have supplied them with a hard drive. This is the
11 first time I'm hearing it's 25 gigabytes. I mean, that would
12 be several hard drives that we would have to supply. Of
13 course, we can do that, and bill it to y'all, in the end.

14 THE COURT: We are going to pay for this one way or
15 the other.

16 MR. DOMBART: It can be done. But, you see, if we
17 have to go to the FBI office to review all of that, you know,
18 then we are going to be sitting in the FBI office for two
19 weeks.

20 THE COURT: Counsel.

21 MR. MORRIS: Well, I'm sure the government agent
22 would be acting in the utmost good faith as to what they
23 believe is important as to my client. The Court sees my
24 issue, your Honor.

25 THE COURT: Yeah.

1 MR. MORRIS: And if it's that darn voluminous, we are
2 going to have to have it in some sort of fashion we can sit at
3 the house in our underwear and look at it.

4 THE COURT: Yeah. I don't want the government making
5 choices about what they think is relevant to each individual
6 defendant. Likewise, sometimes I get defense lawyers saying,
7 "Judge, they are giving me all this stuff. I only want the
8 stuff that's pertaining to my defendant." And I always tell
9 the defense counsel, "No, we are not going to put the
10 government in the position of deciding what's relevant to your
11 client. That's your job."

12 So I still don't understand this hardship on the
13 government on the cell phones. In you are allowing everybody
14 to come in with a hard drive or a flash drive that would be of
15 sufficient size to download all of this, I don't know why you
16 won't get your technicians to make a CD of each individual
17 cell phone download and then burn 33 copies of each of those
18 CDs.

19 MS. PLAYTON: You know, your Honor, there might be a
20 way to do like -- well, first, I would just note, these are a
21 bunch of cell phones, which probably contain, in addition to
22 evidence of crime, personal photographs which may or may not
23 be revealing and very personal in nature, and much of it
24 irrelevant.

25 However, there might be a way to do like a Cloud

1 sharing feature. I don't know. Because of the volume, I
2 think that's something worth exploring. But what I would say
3 to the Court is until today maybe only a handful of people
4 have said anything and had made any request to view them.
5 So...

6 THE COURT: Well, now that they are complaining about
7 attorney incompetence, everybody is now wanting to look at
8 stuff.

9 MS. PLAYTON: What I think I might do is talk to the
10 FBI and see if there is some sort of Cloud sharing. What I
11 will say is, if that works, it isn't forever. It isn't
12 indefinite. It is a finite amount of time, because we buy the
13 space, we use the space, and we're paying for it while it's up
14 there. So if we go that route, and people will want to see
15 it, then they are going to have to take advantage of that time
16 frame.

17 THE COURT: Here's the ruling. You have two weeks to
18 turn this over, and unless you reach an agreement with each
19 individual defendant's counsel, you know, then the default
20 will be ordered production of CDs. So, there's --

21 MS. PLAYTON: When you say two weeks to turn it over,
22 you mean to --

23 THE COURT: You have two weeks to turn it over via a
24 Cloud sharing site. You have two weeks to turn it over, over
25 individual CDs. You have to two weeks to turn it over by them

1 coming to your office in flash drives.

2 MS. PLAYTON: The only thing I would say, your Honor,
3 we've already made it available. And I understand that
4 today's atmosphere, everybody is asking for it, but two weeks
5 may not be practical.

6 THE COURT: I picked your number.

7 MS. PLAYTON: Did I say two weeks?

8 THE COURT: Yes.

9 MS. PLAYTON: For this?

10 THE COURT: Yes.

11 MS. PLAYTON: I don't believe -- if I did I misspoke.
12 I said two weeks for everything else. I wasn't talking about
13 this. I was talking about --

14 THE COURT: So how much time can you do this?

15 MS. PLAYTON: Well, I would like at least a month,
16 but I would like the Court to be open to the possibility that
17 the technology of it may be beyond my control.

18 THE COURT: You have a month.

19 MS. PLAYTON: Thank you.

20 MR. DOMBART: And, your Honor, I was going to also
21 state that to make sure if they are going to do it in a Cloud
22 sharing that we can download it and not that we have to go
23 view it on the Cloud only, that it is downloadable. And,
24 second, I think it's up to us to determine if it's relevant or
25 not, and so I think we should be provided everything.

1 THE COURT: No, I agree with that part.

2 Now, the other part, and gentlemen I know you each
3 represent an individual defendant, but you might want to
4 confer among yourselves and try to come up with like a lead
5 team of three lawyers that, you know, it's almost like a class
6 action case where in civil cases we have, you know, a lead
7 trial team for plaintiffs where you all pick among yourselves
8 two or three of your colleagues and be the point persons for
9 these kind of discovery disputes, or else we're never going to
10 get through all of this. So I'm not going to pick favorites
11 among you-all. You figure among yourselves who you want these
12 persons to be.

13 So there is a lot of work to do in this case and
14 we're still set for trial in two and a half months.

15 MR. DOMBART: And, your Honor, I've always believed
16 from the beginning that this should be designated as a complex
17 case. I had sent out a mass email. There was some opposition
18 to it, but these then I noticed Mr. Morris filed a motion --

19 MS. PLAYTON: You designated it complex, your Honor.

20 THE COURT: So it has been designated and we have a
21 certain trial date here. I guess I'm questioning: "Is it
22 going to be reached?"

23 MR. DOMBART: I couldn't imagine Mr. Gibson being
24 able to get caught up. I mean, I think scheduling-wise you
25 probably are looking at 2018 -- I mean, I'm sorry -- 2019.

1 THE COURT: I'm not sure I want to extend it that
2 long, and so I'm thinking fall-ish is more appropriate, but
3 I'm not going to rule on this yet. I want you-all
4 collectively, and maybe the lead three, circulate something.
5 You-all need to come up with a new scheduling order in this
6 case. You-all need to come up with a new trial date that most
7 of you-all can accommodate. I know there is always going to
8 be moaning and groaning from somebody, but we have to have a
9 trial date that most of you can reach.

10 Confer with Miss Greenup about my availability for a
11 trial date. I am thinking the fall, and then when you start
12 working yourself backwards. What's going to be the deadline
13 to turn over 404(b) evidence? What's going to be the deadline
14 to have a hearing on motions in limine? What's going to be
15 the deadline to turn over Jencks material? What's going to be
16 the deadline for exchanging witness lists? What's going to be
17 the deadline for exchanging exhibits?

18 And so those are the major points that I see that
19 this new scheduling order needs to consider, and you are
20 welcome to add more points to that list, if you think that
21 more points need to be added. But we need to start working on
22 this now, rather than later.

23 Mr. Dombart.

24 MR. DOMBART: You are talking about basically like a
25 scheduling order we would do in a civil case.

1 THE COURT: Yes, exactly. I'm looking for firm
2 deadlines that you-all know what exhibits are going to be used
3 at trial, so each of the defendants know what exhibits are
4 going to be used at trial and they can figure out, based upon
5 what's shaping up, what's in my best interest to do after
6 conferring with you-all.

7 MS. PLAYTON: Your Honor, the only thing I would just
8 suggest to the Court --

9 DEFENSE COUNSEL: I can't hear, Judge.

10 MS. PLAYTON: The only thing I would suggest to the
11 Court, is that, your Honor, Charlie Strauss and I had a
12 37-defendant case before the court and it was, while it was
13 not designated complex, it shaked down a lot differently.

14 THE COURT: Well, most of them pled out.

15 MS. PLAYTON: Well, but not all at once and it was
16 over time. So the only thing I would ask the Court to
17 consider, is you still -- this case, even though it was
18 indicted last year is relatively early. We've only had, I
19 think, one or two docket settings at best and discovery is
20 still ongoing. Your Honor just designated this complex.

21 And so what I would suggest to the Court, while I
22 understand you want the scheduling order and you are looking
23 to try to find a date down the road, I would say that maybe
24 not putting the cart before the horse at this point, because I
25 can also tell the Court there are still -- negotiations are

1 ongoing, and so I would just like you to consider that.

2 THE COURT: The reality is, as you-all know it, we're
3 busy here. I've got now inherited cases in Austin that I have
4 to deal with. I've got two complex criminal cases in Austin
5 that I've got to deal with in the summer. At some point, I
6 need to, for my own court scheduling purposes, figure out, you
7 know, what is going on with all these cases.

8 And there is possibilities that here in this
9 courthouse more cases are going to get reassigned, and so I
10 need to have some certainty about the trial docket. So these
11 lawyers need to have certainty about what they are looking at
12 here. And I don't want to arbitrary shoot for a date in June
13 that everybody -- I sense from the nods in the room that
14 three-quarters of the lawyers here in this room know that
15 we're not going to reach a June setting, and so why are we all
16 going through this farce of a June setting, if it's not going
17 to happen?

18 And so we all have lots of work to do. There is
19 still lots of discovery to be reviewed yet. There is at least
20 two, if not three defendants, who want new lawyers. And I've
21 got to make rulings now yet on 20-something odd pending
22 motions, and I still need to wait to hear from your briefing
23 on resolving some of the pending issues.

24 Now, with regard to lawyers who failed to show, an
25 order to show cause will be issued to George Schaeffer asking

1 for his explanation as to why he did not appear. The other
2 lawyer I'm missing is David Dilley. He's apparently out on
3 military leave?

4 DEFENSE COUNSEL: That's correct, your Honor, I just
5 got a text from him.

6 THE COURT: Well, it would be nice if he would notify
7 me in advance that that he's not going to be here and let his
8 client know that he's not going to be here.

9 DEFENSE COUNSEL: I understood that he had informed
10 the Court. I don't know if it was timely or not.

11 THE COURT: Well, if he passed it on to the clerk's
12 office, it didn't make its way over here. But because he's on
13 military duty, he's excused. So then George Schaeffer is the
14 only one we're issuing an order to show cause to explain his
15 absence.

16 And the other points I want you-all to discuss on the
17 scheduling order are a deadline to submit voir dire questions
18 and a deadline to submit jury instructions.

19 Anything else anybody wants to take up at this time?
20 Miss Norris?

21 MS. NORRIS: Your Honor, just one thing. I think it
22 would be helpful to the Court if Mr. Morris and I could either
23 come to the bench or meet in chambers with you on the
24 specifics of his case.

25 THE COURT: We'll meet in chambers after this.

1 MS. NORRIS: Thank you.

2 THE COURT: Anything else?

3 MR. MALDONADO: May I approach the bench, Your Honor?

4 THE COURT: Yes.

5 Before I forget, when we do that scheduling order, to
6 indicate how many trials days are expected.

7 (At the bench)

8 MR. MALDONADO: This concerns your previous
9 statements ruling. My client is one who may have made a
10 confession, and so if I understand the Bruton rule, the
11 statement would only be produced to those defendants who are
12 implicated, and I would ask that the Court limit it that way.

13 THE COURT: Okay. I've not seen -- who is your
14 client?

15 MR. MALDONADO: Number 35.

16 THE COURT: 35. So I haven't been provided with a
17 copy of what he wrote down, so I haven't seen it.

18 MR. MALDONADO: It wasn't --

19 MS. PLAYTON: It was a confession. It was a poster
20 and it said, this relates to your --

21 THE COURT: Oh, okay.

22 MS. PLAYTON: And, you know, your Honor, as I'm
23 thinking about that, I am concerned. Many of these men are
24 housed together, and if we turn this over, I would like your
25 Honor to be open to the idea of us crafting a way -- he

1 represents one of those people -- that would not place them in
2 jeopardy.

3 THE COURT: Yeah. I mean, don't misunderstand me.
4 I'm trying to strike a balance between giving everybody enough
5 discovery that they can make intelligent decisions and then
6 trying to protect everybody. So if we can craft something, I
7 am, of course, willing to do that.

8 MR. MALDONADO: But I know the Court ordered its
9 production, and I just want to know before it's produced that
10 there be some safeguards.

11 THE COURT: It's produced pursuant to the protective
12 order. So now, with regard to verbally, I mean, so I'm going
13 to want you-all, it's your protective order, why don't you
14 amend the protective order. I'll take a look at it for
15 language that with regard to any confessions or plea
16 agreements that counsel are prohibited from mentioning who
17 confessed or who pled. Maybe that's how. I mean, all they
18 need to know, don't they, is, "Hey, one of your brother has
19 pled. We just can't tell you who."

20 MS. PLAYTON: Could we turn it over with the name
21 redacted?

22 THE COURT: Redacted? Yeah. I'm okay with that too.

23 MR. MALDONADO: But if I understand correctly, it
24 would be produced only to the defendant that is incriminated,
25 not everyone.

1 THE COURT: So that's what I'm trying to get at.

2 MR. LEACHMAN: This is illustrative of the problem,
3 is that, I mean, if we could redact it, and then he didn't, I
4 mean, if it was implicating his client, he doesn't know which
5 person is saying it, what their problem is.

6 THE COURT: So maybe it's like redact not only name
7 but any kind of information that would lead to the disclosure
8 of the identity. I'm willing to go steps to protect people,
9 you guys know the case better than I do, to craft this order,
10 so...

11 MR. MALDONADO: Maybe it's a trial issue, Judge.
12 Maybe this woman never testifies. I mean, it's not
13 discoverable at this point under Rule 16.

14 THE COURT: I understand that too, but the other part
15 is, if any of these other 29 are ever going to plead, they
16 have got to be given tidbits that this thing's --

17 MR. LEACHMAN: We need to work on that.

18 MR. GIBSON: We will sit down and talk to people
19 individually and whittle it down, but I share counsel's
20 concerns.

21 MR. MALDONADO: I don't want it to be produced, at
22 least right now, your Honor.

23 THE COURT: I understand what you are saying. Craft
24 something new for me.

25 MR. LEACHMAN: One other thing I wanted to bring up

1 with you. On this discovery of these cell phones, and I don't
2 know, it's hard to stand up and say, but these people have
3 like nude pictures of their family and wife and all of that
4 stuff. I mean, do we want that where everyone can download
5 all of it? I mean, I would -- you know, you can have a disk
6 of your own guy and you can see the other stuff, that's --

7 THE COURT: So you are in control of this stuff. Can
8 you download -- can you redact, for lack of a better phrase,
9 can you redact the cell phone download to delete all the
10 pictures that are not relevant to this case, and text messages
11 that are not relevant?

12 MR. LEACHMAN: Probably not. I mean, the easiest
13 thing for us is just to turn it all over. That's what you
14 ordered me to do that, so I'm going to do it.

15 THE COURT: Well, so here's the problem though. If
16 you guys aren't going to go through that extra step of taking
17 that stuff out, and then the choice is either complete turn
18 over the phone, or you-all limit the redaction. And you guys
19 aren't willing to limit the redaction, so I've got to let
20 these guys see the phones. I mean, I can't let them -- I
21 can't not give them the phones.

22 MR. LEACHMAN: No. That's what I'm saying. I think
23 maybe you make it available, not downloadable for people to
24 look at all of them, and maybe you make a disk with a copy
25 with --

1 THE COURT: With all due respect to your brethren,
2 some of them are lazy, so if we don't affirmatively say, "We
3 gave it to them," then, you know, I'm setting this whole case
4 up for ineffective assistance of counsel claims later when
5 they come up and say, "They didn't do this, they didn't do
6 that." Hell, I have lawyers not even showing up to court.

7 MS. PLAYTON: In terms of scheduling down the road,
8 your Honor, I just, my concern really is that by bringing them
9 all here they are really emboldened and think that they all
10 have to stand together and they need to remain a gang. And I
11 would ask the Court, not everybody today filed a motion or
12 filed a motion to join, so perhaps in the future if we are
13 going to have these types of conferences, we could limit it to
14 the relevant parties, or if at all feasible, only to the
15 parties that, one at a time.

16 MR. MALDONADO: Your Honor, I'm just feeling
17 uncomfortable right now because issues are being raised beyond
18 what I raised to this Court. I can't speak for my defense
19 counsel out there. You know, the only thing is the
20 confession, is the release of his confession, and you know,
21 that there have to be safeguards. That's my concern.

22 THE COURT: I understand where you are coming from.

23 MS. PLAYTON: It's making me think that those types
24 of issues will keep coming up.

25 THE COURT: Give me a new protective order.

1 (Open court.)

2 THE COURT: Any attorney want to be recognized before
3 we adjourn?

4 DEFENSE COUNSEL: I was just going to ask, your
5 Honor, a guesstimate on the government's part, not holding
6 their feet in concrete, but how long they think this trial is
7 going to last.

8 THE COURT: So when you all engage in this new
9 scheduling order, I want an estimation of trial days included
10 in this new scheduling order.

11 MR. DOMBART: Your Honor, George Dombart again for
12 Mr. Ramos. And I know I had filed a motion regarding a
13 transfer to Geo, but I want to address that issue again
14 because I received several complaints from Mr. Ramos about the
15 conditions, number one, is that there is no access to the law
16 library; number two is there is some hygiene issues, that they
17 don't allow him to shower and things except for like once a
18 week I think; and three, there is a spider infestation over
19 there.

20 And if you like, he can tell you exactly. And I
21 understand that the marshals are responsible for placement and
22 stuff, but, you know, he would like the opportunity to be able
23 to have access to a law library and I don't know if they have
24 one there or not, but he is the number one defendant, and
25 so...

1 THE COURT: Again, I have no authority over the
2 marshal's office about placement. So now all I can suggest to
3 your client is that he can file an administrative grievance at
4 the facility complaining about denial of access to the law
5 library and complain of denial to shower facilities on a
6 regular basis, but that's his remedy.

7 MR. DOMBART: I've also suggested to him to write the
8 marshals about it too, so...

9 THE COURT: So, you know, he can write to the
10 marshals or you can write on his behalf to the marshals and
11 make the complaints. The marshals have the contract with that
12 facility, and so ultimately the marshals are the contract
13 holder.

14 MR. DOMBART: Yes, your Honor.

15 THE COURT: Anything else from any of the defense
16 counsel?

17 And with that, we're adjourned.

18 (Concludes proceedings.)
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2 I certify that the foregoing is a correct transcript from
3 the record of proceedings in the above-entitled matter. I
4 further certify that the transcript fees and format comply
5 with those prescribed by the Court and the Judicial Conference
6 of the United States.

7
8 Date: 08/15/18

/s/ *Gigi Simcox*
United States Court Reporter
655 East Cesar E. Chavez Boulevard
San Antonio, TX 78206
Telephone: (210) 244-5037